

UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Docket No. 09-427

ALEXIS CANDELARIO SANTANA, and
DAVID OQUENDO RIVAS,

San Juan, Puerto Rico
March 6, 2013

Defendants.

JURY TRIAL

BEFORE THE HONORABLE JUDGE JOSÉ A. FUSTÉ,

UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Government: Mr. Bruce Hegyi, AUSA
Ms. Maria Dominguez Victoriano, AUSA
Ms. Marcela Mateo, AUSA

For the Defendants: Mr. David Arthur Ruhnke, PHV
Mr. Francisco Rebollo Casalduc, Esq.
Mr. Jose R. Aguayo, Esq.

Proceedings recorded by stenography. Transcript produced by
CAT.

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San Juan, Puerto Rico

March 6, 2013

At or about 9:02 AM

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(At 9:02 AM, jury entered the courtroom.)

THE COURT: So, Mr. Aguayo.

MR. AGUAYO: Yes, sir.

THE COURT: Let me say this. As we proceed on this stage, if for example you have a witness that he doesn't have, you can present your witness ahead. I have no problem with that. Okay?

MR. RUHNKE: Yes, Your Honor.

THE COURT: Okay.

MR. AGUAYO: May I begin, Your Honor?

THE COURT: Yes. Go ahead.

MR. AGUAYO: The defense of David Oquendo calls Dr. John C. Brigham. If I could just tell him to come in.

(At 9:03 AM, witness took the stand.)

COURTROOM DEPUTY: Raise your right hand.

Do you solemnly swear that the testimony you are about to give in this case is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

MR. AGUAYO: May I proceed, Your Honor?

1 THE COURT: Please.

2 D R. J O H N C. B R I G H A M,
3 called as a witness by the Government, having been sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. AGUAYO:

7 Q. Sir, could you state your name for the record?

8 A. Dr. John C. Brigham.

9 Q. And, Dr. Brigham, could you tell us your educational
10 background, sir?

11 A. Yes. I have a Bachelor's Degree from Duke University in
12 1964. Master's Degree and Ph.D. Degree from University of
13 Colorado. The Ph.D. was received in 1969.

14 Q. And what about your employment, sir?

15 A. I began as an assistant professor at Florida State
16 University in 1969. I stayed with Florida State, and retired
17 from teaching in 2004. But I remain an emeritus professor of
18 psychology.

19 Q. Sir, can you explain what an emeritus professor is?

20 A. Yes. It's an honorary title given by the University to
21 some retired faculty indicating that the University would like
22 them to stay in contact with the University. In my case, I
23 still have an office in the psychology building where I go in
24 to keep current and check on research.

25 Q. And what courses did you teach while you were at Florida

1 State University, sir?

2 A. The two courses I taught most often were psychology and
3 law and social psychology.

4 Q. Okay. Sir, what is your primary area of research?

5 A. My primary area of research since about 1975 was studying
6 the factors that effect the accuracy of eyewitness memory.

7 Q. And do you have publications relating to eyewitness
8 reliability?

9 A. Yes. I've published about 55 articles and book chapters
10 on the subject.

11 Q. Are these publications in peer-reviewed journals?

12 A. Yes, they are.

13 Q. And what exactly is a peer-reviewed journal?

14 A. A peer-reviewed journal is one that uses the so-called
15 peer review technique to evaluate research papers that are
16 submitted to it. So when a scientist does a study, analyzes
17 the data, writes it up, he or she then submits it to the
18 journal.

19 The editor reads it, sends it out to two or three
20 experts in the area. They evaluate it very carefully. Each
21 of them prepares a lengthy review saying the strong points and
22 the weak points of the research and of the write up.

23 The editor then uses these reviews along with his or
24 her own opinion to decide what happens to the article, the
25 paper. Occasionally it's accepted right then, but almost

1 never. More often, the author is told if you revise this
2 article according to what the reviewers have said, it may be
3 acceptable. We will then send it out for review again. Or
4 they may say if you revise the article and gather more data,
5 do another study, we might find it acceptable. Or they may be
6 told that the article is rejected.

7 Eventually about 80 percent, that is four out of
8 five articles that are submitted, are rejected. The idea
9 being that only the very best of the articles are accepted for
10 publication. So it's a quality control kind of procedure to
11 assure that the best articles, best studies, most well done
12 studies are published. But other studies that have some
13 defects are not published.

14 Q. And in your case, approximately 55 publications?

15 A. Yes.

16 Q. All right. Now, have you received any research grants,
17 sir?

18 A. Yes, I have.

19 Q. And what kind?

20 A. I've received research grants from the National Science
21 Foundation in Washington, and the National Institute of
22 Justice, several research grants supporting studies to study
23 eyewitness memory.

24 Q. How did you obtain these grants, sir? What's the
25 process?

1 A. The process is somewhat similar to writing an article.
2 You create a grant proposal in which usually you propose doing
3 several related studies on a single issue or several issues.
4 You then submit that proposal to the granting agency. They
5 then -- it is read by the head of that division of the
6 granting agency.

7 It is sent out to reviewers much like a paper would
8 be. They evaluate the proposal, make suggestions for
9 improvement, note any deficiencies, and then for each granting
10 agency, there is a panel that meets. And they look at all the
11 grant proposals, look at all the reviews of the grant
12 proposals, and come up with recommendations about which
13 proposal should be accepted and which are not acceptable.

14 And again here, for the National Science Foundation
15 and the National Institute of Justice, the two places that I
16 received grants from, about 80 percent or more of the
17 proposals that are submitted to them are not accepted. But my
18 proposals were accepted.

19 Q. Are you a member of any professional organization, sir?

20 A. Yes, I am.

21 Q. Which one, sir?

22 A. The main ones are the American Psychological Association
23 and the American Psychology Law Society.

24 Q. Have you held any offices?

25 A. Yes. I was secretary treasurer, then treasurer, then

1 president of the American Psychology Law Society. I've also
2 served on the governing counsel of the American Psychological
3 Association.

4 Q. And, sir, have you attended or presented papers at
5 professional meetings?

6 A. Yes, I have.

7 Q. What kind of papers are these?

8 A. Papers most often on eyewitness memory and the research
9 that I have done on the things that effected eyewitness
10 memory. And I've presented those at conferences in the United
11 States and Canada, and England, Scotland, Wales, Italy and
12 Australia.

13 Q. And how many presentations have you done?

14 A. Well over a hundred. I'm not sure of the exact number.

15 Q. And have you attended professional presentations by other
16 researchers on eyewitness memory?

17 A. Yes, I have.

18 Q. How many, sir?

19 A. Again, well over -- that would be several hundred, but I
20 don't have an exact count.

21 Q. Have you been a member of a general editorial board?

22 A. Yes, I have been.

23 Q. Which one, sir?

24 A. The journal Law and Human Behavior, also the journal
25 Basic and Applied Social Psychology, and the Journal of

1 Personality and Social Psychology.

2 Q. And what were your responsibilities there, sir?

3 A. As a member of the editorial board, the editor sends to
4 you a number of pages that have been submitted and you serve
5 as the first reviewer of these papers.

6 Q. Sir, how much research is there on the factors effecting
7 eyewitness liability?

8 A. There's been a great deal of research since about 1970.

9 Q. And the nature of that research, sir?

10 A. It's been experimental research. There's also been
11 correlational research. There's been what's called archival
12 research. There's also been survey research.

13 Q. Sir, let's try to break this down. What exactly is
14 experimental research?

15 A. Experimental research means you do experiments using the
16 scientific method where you gather data very precisely and
17 without bias. You analyze that data with the appropriate
18 statistics. You then draw conclusions relating to the
19 hypotheses that you started out with, what you predicted would
20 happen, and then you write up that study in article form, and
21 submit it for publication.

22 Q. And what is correlational research?

23 A. Correlational research is when you look at the
24 relationship between two or more factors. You don't
25 experimentally change those factors, but you look at how much

1 they are associated with each other.

2 Q. And how about survey research, sir?

3 A. Survey research is when you survey groups of people for
4 their attitudes or beliefs on a particular issue. In this
5 case, for example, I did surveys of law enforcement and
6 attorneys in Florida on their evaluations of eyewitness
7 evidence and eyewitness testimony.

8 Q. And archival research, sir?

9 A. Archival research refers to looking at actual cases and
10 trying to draw some conclusions from looking at a series of
11 cases. This research is good for identifying potential
12 problems. It's less valuable for answering those questions,
13 because every situation is different. Every case is
14 different.

15 So it's very hard to find enough cases that are
16 similar enough that you can draw a general conclusion from
17 what happened in all those cases.

18 Q. And, sir, how familiar are you with these types of
19 research that you mentioned?

20 A. Very familiar.

21 Q. All right. And how do you stay familiar?

22 A. By reading the research, keeping up, reading the relevant
23 scientific journals.

24 Q. Sir, have you been qualified as an expert on eyewitness
25 issues?

1 A. Yes, I have been.

2 Q. How often, sir?

3 A. Well, I've been qualified as an expert for hearings and
4 so forth probably more than a hundred times. I've actually
5 testified in front of a jury at trial six times in Federal
6 Court, 37 times in state court, and twice at military court
7 martials.

8 Q. And which jurisdiction was this, sir?

9 A. Well, in the Federal court was in Baltimore, Nashville,
10 Memphis, Dulthen, Alabama and Philadelphia. State courts have
11 been in 11 different states.

12 Q. Sir, have you ever been hired by the government to advise
13 them in the area of eyewitness identification?

14 A. Yes, I have been.

15 Q. How many times, sir?

16 A. I've been contacted and worked with the Government on two
17 cases.

18 Q. Okay. And have you ever testified for the Government?

19 A. No, I did not testify in those cases.

20 MR. AGUAYO: All right. Your Honor, I would tender
21 Dr. Brigham to the government.

22 MR. HEGYI: No objection.

23 THE COURT: No objection. No voir dire?

24 MR. HEGYI: No voir dire at this point.

25 THE COURT: Very well.

DIRECT EXAMINATION

1
2 BY MR. AGUAYO:

3 Q. Now, Dr. Brigham, first of all, what do you see or what
4 is your role here in testifying before the jury?

5 A. My role as I see it is to provide the jury members with
6 information, that is, summaries of what's been shown by this
7 40 years of scientific research. And many of the things that
8 have been found are things not within people's every day
9 knowledge. And the idea is to provide this background
10 information that jurors might find useful and applicable to
11 the situations of any particular case.

12 Q. So you're basically giving them an overview concerning
13 eyewitness identification?

14 A. Yes.

15 Q. Not specifics, just an overview so they can use that in
16 their deliberations if you will?

17 A. Exactly.

18 Q. Okay. Sir, has there been much research over eyewitness
19 testimony in the last several decades?

20 A. Yes. There have been several thousand studies published
21 since 1970.

22 Q. All right. Now, this would be about different factors
23 concerning eyewitness identifications?

24 A. Yes.

25 Q. All right. Would those factors be like stress?

1 A. That would be one, yes.

2 Q. Weapon focus?

3 A. Yes.

4 Q. Retention intervals?

5 A. Yes.

6 Q. Post event information?

7 A. Yes.

8 Q. Lineup instructions that should be given by officers when
9 they're giving a lineup?

10 A. Yes.

11 Q. Or photo arrays?

12 A. Yes.

13 Q. Unconscious transfers?

14 A. Yes.

15 Q. All right. Let's talk a little bit about each one at
16 this time, all right? In terms of stress, what information do
17 you have that could help the jury?

18 A. Well, what we know from surveys is that many people
19 believe that stress enhances memory, that it makes it better.
20 Many people believe that a traumatic event is burned on
21 somebody's memory. They say, I'll never forget that event or
22 I'll never forget that face. And a lot of the people who are
23 witnesses to crimes feel that way.

24 What research shows, however, is that extreme stress
25 interferes with memory. That is, it interferes with what gets

1 encoded into memory. It interferes with how things are
2 perceived, and it interferes with how they're stored in the
3 brain. So high stress is actually associated with poor
4 memory, although many people aren't aware of this. And there
5 have been dozens of studies showing this is the case.

6 Q. All right. So stress interferes with the encoding in the
7 memory, correct?

8 A. Yes.

9 Q. What about weapons focus, sir?

10 A. What research has shown when a weapon is involved in the
11 crime, that has two effects. One is it raises the level of
12 stress even higher for victims or potential victims or
13 witnesses. Secondly, people's attention tends to be focused
14 on the weapon rather than on the face of the person holding
15 that weapon.

16 So when there's a weapon involved, people quite
17 understandably focus on that weapon, want to see where it's
18 pointed and so forth. And they therefore spend less time
19 looking at the face of the person holding that weapon, so
20 they're less able to encode a memory of that face, and
21 therefore less able to identify them later on.

22 Q. What about duration, the time they have to view the
23 person?

24 A. The longer they have to view, the better the memory that
25 will be encoded. This simple fact becomes a little more

1 complicated, because it's also been shown people tend to
2 exaggerate how long a stressful event took. That is, people
3 tend to see, remember it as taking two or three times as long
4 as it really did.

5 So if they say, they think it took a minute, more
6 likely it took 20 or 30 seconds. If they say it took 30
7 seconds, more likely it took ten or 20 seconds. So that's a
8 very human tendency to exaggerate the length of time that a
9 traumatic event lasts.

10 Q. Okay. And you mentioned lineup instructions. Could you
11 explain to the jury what you mean by that?

12 A. Yes. There's been a lot of work, research and legal work
13 on what instructions should be given to a witness before he or
14 she is shown a photograph lineup or in some cases a live
15 lineup. The concern is that people may be biased
16 intentionally or unintentionally by instructions that are
17 given to them or by the procedures that are used.

18 So the U.S. government in 1999, the Department of
19 Justice published what they call a guideline for eyewitness
20 evidence. And in those guidelines, they said there were five
21 or six factors that ought to be included in the instructions
22 that are given to anybody before they view a lineup. These
23 include telling them they will view a lineup, that the person,
24 the suspect may or may not be in this lineup, telling them
25 that appearances may change, particularly hair and facial

1 hair, between when a photograph is taken and when a person is
2 observed committing a crime. Telling them that it is just as
3 important to clear innocent persons as it is to convict guilty
4 persons. I'm leaving one out.

5 MR. HEGYI: Investigation will continue.

6 THE WITNESS: Thank you very much.

7 MR. HEGYI: You're welcome.

8 THE WITNESS: Yes. The other one would be the
9 investigation will continue regardless of whether you identify
10 anybody or not, because people sometimes worry, if I don't
11 pick somebody out, they will stop the investigation. And if
12 you're a witness or particularly a victim, you don't want that
13 investigation to stop.

14 So this tells people that the investigation will
15 continue whether or not they pick somebody, so they won't feel
16 pressured that they have to pick somebody.

17 Q. And these instructions, sir, you said that it was the
18 Department of Justice. You're talking about the Federal
19 Department of Justice?

20 A. Yes.

21 Q. And that would include FBI agents and ATF agents, Federal
22 agents?

23 A. Federal agents, yes.

24 Q. Okay. Now, what about the area of unconscious transfer?

25 A. Yes, that's a fancy term that's been developed by --

1 Q. The sound --

2 MR. RUHNKE: I think we lost sound.

3 THE WITNESS: She asked me to move away a little
4 bit.

5 THE INTERPRETER: It was the feedback.

6 BY MR. AGUAYO:

7 Q. Could you speak loudly, sir?

8 A. Okay. Unconscious transference is a term sometimes
9 describing memory blending or source confusion from the fact
10 that it's easier to know that you've seen somebody than to
11 remember the conditions under which you saw them, and in every
12 day life that's trivial. People may remember, I heard
13 somewhere, or somebody said something, and not remember the
14 source. Or you may remember that somebody told you something,
15 and it turned out it was somebody else who told it to you. Or
16 you saw a person in one situation, you thought that you'd seen
17 them in another.

18 In the criminal justice system, unconscious
19 transference becomes more of a potential problem in that
20 people may see a person in one situation, yet remember that
21 they've seen him in a different situation. Or they see two
22 people in two different situations and think it's the same
23 person. So the two images are blended in their mind.

24 Again, when this happens, people are not aware of
25 it, but research shows that it's a common phenomenon that is

1 ordinary. People with ordinary memory have this happen to
2 them.

3 Q. What about the area of blind administration? What is
4 that?

5 A. That has to do with recommended procedure for how a
6 lineup should be administered, in addition to the obstructions
7 which I've already talked about. It's recommended that the
8 person who administers the lineup, that is, the law
9 enforcement person who shows the lineup to the witness, should
10 not know who the suspect is, should not know which lineup
11 member is the suspect.

12 Usually of course the person does know who the
13 suspect is. It may be the detective whose case it is, and he
14 or she knows that, for example, the suspect is number three.
15 The problem is that knowing that, that person, the law
16 enforcement officer may completely, unintentionally or
17 sometimes intentionally lead witnesses to identify that
18 person.

19 And again, research has shown that even non-law
20 enforcement people, but ordinary people put in a situation of
21 showing a lineup to somebody else, they tend to lead
22 unintentionally, to lead that person to picking out who they
23 want them to pick out. So blind would mean that you give the
24 lineup to someone else to administer to the witness, so the
25 person who hands the lineup to the witness doesn't themselves

1 know who the suspect is. So that there's no way they can bias
2 the subject's responses.

3 So it's a fairly simple change, but one that can
4 have very important consequences in taking away that possible
5 source of bias.

6 Q. And what about divided attention?

7 A. That refers to the situation when in any kind of -- any
8 kind of, say, crime situation your attention may be divided
9 between if there's more than one perpetrator, between the two
10 or more perpetrators. If there are other things going on,
11 I've already mentioned attention to the weapon, if there are
12 avenues of escape, things happening to other people,
13 everything that divides a person's attention means that they
14 can spend less time looking at the face of the central
15 perpetrator, making it harder for them later to be able to
16 identify that person.

17 Q. What about the effect of alcohol?

18 A. Research has shown that the effect of alcohol is to mess
19 up encoding basically, so what gets into memory, when a person
20 has been drinking, is there's -- less gets into memory and
21 it's more distorted.

22 MR. AGUAYO: That would be all, Your Honor.

23 THE COURT: Thank you. Mr. Ruhnke, anything else?

24 MR. RUHNKE: Yes, Your Honor.

25 THE COURT: Please.

EXAMINATION

1
2 BY MR. RUHNKE:

3 Q. Doctor, good morning.

4 A. Good morning.

5 Q. I'm standing here with a laptop computer behind me. On
6 that laptop computer I've got family photographs. Some of
7 them are ten years old. Some of them are a month ago. If I
8 want to look at a ten-year-old photograph of my kids, all I
9 can do is call it up on the laptop. And I look at it, and
10 there it is. Is that how memory works?

11 A. No. A lot of people think that memory is like a computer
12 or a video camera that you perceive something, put it in a
13 memory, and then can easily retrieve it later on. In fact,
14 there are three different stages of memory, and what gets in
15 is never complete. It's never totally accurate. And the more
16 conditions are difficult, the less accurate it's going to be
17 when it gets in.

18 Then there's the retention stage, where it's held in
19 memory, and everything that happens during that retention
20 stage can effect that memory and change it. So it doesn't
21 stay stable like a computer file. Rather, it keeps being
22 modified by everything that happens subsequently that's at all
23 relevant to it without the person being aware that the
24 memory's being changed.

25 Q. So when we get to the retrieval stage, is what you're

1 saying that events can change the actual memory, and the
2 person just doesn't even realize that their memory has
3 changed? And they're doing their best to be truthful, but in
4 fact they're mistaken?

5 A. Yes. What we're talking about is honest errors, people
6 trying to do the best they can under very difficult
7 situations.

8 Q. Most crime situations are very difficult, very stressful,
9 other factors that -- it makes it very hard to encode a fairly
10 accurate memory even. And then the longer the time period
11 between that crime and the identification, the more forgetting
12 occurs, but also other information which we sometimes call
13 post event information can come in and change the memory.

14 So by the time the person gets the identification
15 situation, what's in memory is often not very similar to what
16 entered memory in the first place. It's been changed by
17 forgetting and by other information.

18 Q. So the person is doing their honest best to describe what
19 they describe, doing their honest best to make an accurate
20 identification, but are simply wrong?

21 A. Yes.

22 Q. Why have there been so much studies of this field?

23 MR. HEGYI: Objection, Your Honor.

24 THE COURT: I will allow it. I will allow you to
25 cross-examine of course. Go ahead.

1 MR. RUHNKE: Thank you.

2 THE WITNESS: There are two main reasons. One is the
3 study of memory is a central issue of psychology anyway.
4 Psychology is the study of behavior, and you can't have
5 behavior without memory.

6 But secondly, there's been a realization over the
7 past 40 years that eyewitness mistakes have lead to more
8 miscarriages of justice, more convictions of innocent people
9 than has any other factor.

10 BY MR. RUHNKE:

11 Q. And does the psychology study, in essence, good faith
12 errors and what goes in to make up good faith errors?

13 A. Yes. Exactly. There have been some people that have
14 studied lying and so forth, but that's a whole different area.
15 For eyewitness memory, we're talking about people doing the
16 best they can in a difficult situation.

17 Q. Obviously if a witness decides they're going to lie about
18 what they've seen, these factors don't come into play?

19 A. Right. That's a whole different issue, yes.

20 Q. And why do general rules of thumb in terms of percentages
21 of accuracy by people attempting to make a good faith
22 identification --

23 A. What's been estimated are the American Psychological
24 Association submitted a brief to the Supreme Court a few years
25 ago in a case involving eyewitness testimony, and based on

1 | their study of archival studies, that is actual crimes, they
2 | estimated that about one-third of all identifications are
3 | incorrect.

4 | Q. Good faith mistakes?

5 | A. Right. Not people lying, but people doing the best they
6 | can to make an accurate identification.

7 | Q. Often witnesses will be asked, how certain are you that
8 | that's the person that you saw? And a witness will say, I'm a
9 | hundred percent confident in my identification.

10 | Have there been studies and has that issue been
11 | looked at? Is there a relationship between accurate
12 | identification and level of confidence expressed by the
13 | witness?

14 | A. Yes. There have been a lot of studies of that issue,
15 | some of which I did in my lab. There are two main findings.
16 | One is that overall there is only a weak relationship between
17 | somebody's certainty that they're correct and the actual
18 | correctness of their eyewitness identification. For most
19 | kinds of memory, that is a strong relationship. Certainty is
20 | a good indication of accuracy. For eyewitness memory,
21 | however, because of all these complicated factors, the
22 | relationship between confidence and accuracy is not strong.
23 | So what I'm --

24 | Q. I'm sorry.

25 | A. What I would tell my classes is confidence is in a sense

1 a false cue. Something that for most kinds of memory, if a
2 person says they're certain, you can be pretty sure they're
3 right. For eyewitness memory, that's not the case. It
4 becomes more complicated, because you may remember what I
5 mentioned in the instructions, or I should have mentioned is
6 you ask the person are they certain immediately after they
7 make the identification, because another thing that's been
8 found is so-called confidence hardening. That is, once
9 somebody's committed themselves to a position saying yes, for
10 example, it's number three, they will attempt to justify that
11 position to themselves and others, and become increasingly more
12 confident as time goes by.

13 This tendency becomes even stronger if they're in a
14 situation where they feel they have to be certain to be a good
15 witness, or other people are telling them, you need to be
16 certain or you'll get torn apart on the witness stand. So for
17 this combination of reasons, people become more and more
18 certain if they were not certain initially.

19 So by the time they get to be in court, they may
20 genuinely feel completely certain when that's not how they
21 felt when they made the identification.

22 Q. You mentioned before the effect of time that passes
23 between the actual observation and a report of the
24 identification or an actual identification procedure, and that
25 during that period of time memory can actually change?

1 A. Yes.

2 Q. Suppose hypothetically somebody observes an event and
3 after the event is repeatedly exposed to newspaper publicity
4 and photographs of an individual who's alleged to have been
5 the person who did what they claim to have seen? Could that
6 have an effect on memory changing? Could it actually change
7 the person's memory?

8 A. Yes, it certainly could. Again, if there have been
9 pictures in the newspaper, then when they later see a lineup
10 and somebody looks familiar, they may think it looks familiar
11 because that's the guy I saw committing the crime. When in
12 fact they may be -- maybe he looks familiar because that's the
13 person whose picture you saw in the newspaper. And again, the
14 witness is not able to distinguish those things. There's no
15 way to go back and take apart those memories and say okay, I'm
16 only identifying him because that's the person I saw at the
17 crime. And I'm ignoring what I saw in the paper, because
18 people can't do that.

19 Q. Take another hypothetical situation where someone is
20 somewhat familiar with an individual, witnesses a chaotic --
21 witnesses a very traumatic event, and then begins to see
22 photographs of that person with whom they're familiar with in
23 the newspapers and on television for many months. Could
24 unconscious transference occur under that set of the
25 circumstances?

1 A. Yes, it could. Again, particularly if there are repeated
2 photographs. You have the one memory encoded at the crime
3 under probably very difficult situations, so it's a very
4 tentative memory anyway. And then if there's exposure to all
5 these photographs, that could certainly change the person's
6 memory without their being aware of it such that they
7 misremember the face they saw in the photographs as being also
8 the face they saw at the crime.

9 Q. Have there been studies of what is called ear witness
10 identification, meaning voice recognition?

11 A. Yes, there have been.

12 Q. And generally speaking, in terms of eyewitness
13 identification versus ear witness identification, which is
14 more accurate, if either?

15 A. Studies have shown that ear witness identification, that
16 is voice identification, is even more difficult than
17 eyewitness identification. Probable cause people's voices can
18 change so much in terms of loudness and tone and so forth.
19 People in experiments where they're trying to identify a
20 person whose voice they've heard before and pick it out of
21 several other voices in a kind of ear witness lineup, tend to
22 do very poorly. It's a very difficult situation to identify
23 somebody's voice.

24 Q. And have there been studies done on the effect that
25 baseball caps have on the accuracy of eyewitness

1 identification?

2 A. There have been studies of various forms of disguise or
3 anything that -- and the general finding is that anything that
4 covers up part of the face or the head will make it more
5 difficult to remember that face, because there's less
6 information that comes in. You know, a full mask would be of
7 course the extreme case, but anything that covers hair or
8 ears, forehead, anything like that, makes it more difficult to
9 identify the person than if there was no hat.

10 Q. I'm going to put on this baseball cap, and if you'll tell
11 me what features then are not available to make an eyewitness
12 identification, with the Court's permission.

13 Okay. Now I've got this New York Yankees baseball
14 cap on. What's different?

15 A. It's difficult for me, because I was a Brooklyn Dodgers
16 fan.

17 Q. Okay. I wouldn't have put a Mets hat --

18 A. Okay. I can't see your hair color. If you turn your
19 head to the side, I may be able to see it. But it takes away
20 from my vantage point your hair color, how your hairline is,
21 how low or high it is, and characteristics of the forehead.

22 Q. And again, have there been studies done with precisely
23 that issue?

24 A. Yes. And as I said, people have a harder time
25 identifying somebody when any part of their face is covered up

1 or obscured.

2 Q. I want to describe the situation where various witnesses
3 have described the scene as chaotic, pandemonium, shots being
4 fired back and forth, music blaring from a DJ speaker system,
5 people screaming, people being shot and wounded, people being
6 killed, horses tied up outside panicking, dim lighting, people
7 and witnesses afraid for their lives, people who are terrified
8 as to what is going on around them. Is that a situation that
9 is conducive to accurate eyewitness identifications or
10 inaccurate eyewitness identifications?

11 A. That would be a very, very difficult situation for
12 anybody to encode a good facial memory of anybody else in that
13 situation. You have all kinds of factors making it very, very
14 difficult to encode a good memory. So that would be -- would
15 seem to me about the extreme of the most difficult situation
16 you could try to remember. Maybe that and war time would be
17 the two most extreme situations.

18 MR. RUHNKE: Okay. May I just have a moment, Your
19 Honor?

20 THE COURT: Yes.

21 MR. RUHNKE: Thank you, Doctor.

22 THE COURT: Mr. Hegyi.

23 CROSS-EXAMINATION

24 BY MR. HEGYI:

25 Q. Good morning, Doctor.

1 A. Good morning.

2 Q. Mr. Ruhnke in his hypotheticals to you a minute ago asked
3 you is this possible, is this possible, is this possible, is
4 this possible. Doctor, we can agree that virtually anything
5 is possible, right?

6 A. I suppose so, yes.

7 Q. Okay. Now, you told Mr. Aguayo that every case is
8 different, right?

9 A. Yes.

10 Q. And that you can't draw conclusions based on archival
11 evidence, because there really isn't enough archival evidence
12 to come up scientifically with reliable conclusions, right?

13 A. There's a lot of evidence, but the cases are so different
14 from one another, it's hard to find cases that are similar
15 enough.

16 Q. Right. And even, even in archival evidence -- now, by
17 archival, so we understand what you're talking about, we're
18 talking about a guy who or woman who's working at a service
19 station who is minding his own business, and it's dark
20 outside, and somebody comes in, you know, maybe a Stop-N-Go,
21 and puts a gun in their face, and grabs the money, threatens
22 to kill them. Grabs the money, and then runs out into the
23 dark, right? And then later they take the videotape, and they
24 analyze it, and they compare that to what the clerk ended up
25 doing with an identification, correct?

1 That's the kind of thing we're talking about?

2 A. Well, any kind of case could be archival.

3 Q. Okay. But what we're really talking about there is
4 stranger on stranger IDs for the most part, correct?

5 A. For the most part, yes.

6 Q. Okay. And even in those stranger on stranger ID
7 situations, what you've told us is that in the vast majority
8 of times, about two-thirds of the time, the victim gets it
9 right, correct?

10 A. That's correct, yes.

11 Q. Okay. And we know or I think you'll tell us that
12 something that seems fairly commonsensical, at least to me, if
13 that's a word, that if I'm asked to pick out somebody I don't
14 know that I've only seen for a fraction of a second, that it
15 might be more difficult than if it's somebody I do know, fair
16 enough?

17 A. Fair enough, yes.

18 Q. And if it's somebody that is -- if I'm African American
19 and I'm trying to pick out a Caucasian person or if I'm a
20 Caucasian person and I'm trying to pick out an African
21 American person, that might be more difficult for me than
22 picking out someone from my own race? Is that what studies
23 show?

24 A. Yes, that's what the research has shown, yes.

25 Q. Okay. So if we're now talking about situations where it

1 is people of the same race, the concerns out there are reduced
2 fairly dramatically?

3 A. Reduced if they've been -- if they've been of different
4 races?

5 Q. Correct.

6 A. Correct, there's more chance of success if they're of the
7 same race than of different races.

8 Q. All right. And if people know one another, the chances,
9 theoretical chances of being incorrect are reduced, correct?

10 A. I would think so, although the research is all -- pretty
11 much all been on stranger recognition, so --

12 Q. And so what you're telling us here, you're talking about
13 stranger on stranger things, correct?

14 A. Yes.

15 Q. And a lot of that research has to do with instances where
16 mock studies are done, in a classroom perhaps like yours at
17 Florida State where you have students that are college
18 students, maybe out partying the night before, maybe bleary
19 eyed. And they happen to sit there, and you have somebody run
20 into the room with a pretend gun and do something, and then
21 run back out again; is that right?

22 A. Some studies. I've never used a pretend gun in any of my
23 studies, but I have had people steal something.

24 Q. Okay. Run in, steal something, and run out. And then
25 you've asked them, when these students were sitting laughing

1 and talking about what they did the night before or whatever,
2 and then someone comes in running in, steals something, and
3 runs back out again, not even using a pretend gun, just run in
4 and grab a Monte Blanc pencil and/or pen out of the drawer and
5 run out again, and even in those studies the majority of the
6 time the students get it right?

7 A. Well, in some studies the majority get it right. In some
8 studies the majority don't get it right. It depends on how
9 difficult the situation is.

10 Q. And one of the things that get criticized -- your studies
11 get criticized, right?

12 A. Occasionally, yes.

13 Q. And one of the things they get criticized for is in fact
14 when you take a 19-year-old college student and you ask them,
15 you know, is this the guy or can you identify the person, it
16 has no consequence to them. It's a pretend thing. They know
17 it's a pretend thing. So what difference does it make?

18 That's him right?

19 A. Sometimes they know it's a pretend thing. Sometimes they
20 don't. Sometimes in some of my studies we've had police
21 officers give the photo lineup so they thought it was still
22 real. It's true they don't know that anybody's going to be
23 arrested or anything like that.

24 Q. Okay. Let's get real for a minute. You're talking about
25 college students. You're talking about things you do over a

1 series of years. So the college students sitting in your
2 class know they've done this in other years, right?

3 A. They're not my students. They're introductory psychology
4 classes.

5 Q. You don't do this over summer school. They have brothers
6 and sisters that have gone to your school. They have other
7 friends from their high school that have gone to your school.
8 So they know this is the kind of thing that happens at times
9 in your classroom, right?

10 A. Well, again, it's not in my class. It's when they're
11 taking introductory psychology. Probably some of them have
12 older peers. I doubt psychology experiments are a real focus
13 of conversation, but some people may have some idea,
14 awareness.

15 But they are asked afterwards, and anyone who did
16 have awareness or was suspicious, they're not included in the
17 data analysis.

18 Q. But you don't do anything ahead of time, and you don't
19 know how many college students are interested in it. I want
20 to be part of this, so I'm going to do it anyway. You have no
21 way of knowing?

22 A. I have no way of knowing what the motivation is, no.

23 Q. The truth is you, Doctor, you didn't see any of the
24 witnesses in this case testify, did you?

25 A. That's correct.

1 Q. All right. And you are not here to tell this jury that
2 any of the eye witnesses who testified in this case got it
3 wrong, are you?

4 A. No, I'm not here to do that.

5 Q. Because there's no scientific way, not just for you, but
6 there's no scientific way for anybody else to say they got it
7 wrong, is there?

8 A. No. That's why the juror's job is so tough.

9 Q. Right. And in this case, have you even reviewed the
10 testimony of the witnesses?

11 A. Actually I did review the testimony of the witnesses,
12 yes.

13 Q. Of all of the witnesses?

14 A. Four of the witnesses.

15 Q. And you told us that you were -- you have testified I
16 think you said a total of -- give me one second, of 45 times,
17 six times in Federal courts, 37 times in state court, and two
18 times in military court martials, correct?

19 A. Yes.

20 Q. And that's over your 40 year career in academia, and
21 offering yourself as an expert witness to people that are
22 willing to hire you, correct?

23 A. Yes.

24 Q. And so roughly once a year you've been accepted on
25 average as an expert in court, right?

1 A. On average, yes. I've been accepted much more in recent
2 years than in past years.

3 Q. All right. Now, the -- you said you were hired, you were
4 consulted, in 40 years you were consulted twice by a
5 governmental agency to consult with them; is that right?

6 A. Yes.

7 Q. Okay. And this would be state governments, local
8 governments, municipal governments, Federal government? Which
9 government was it that we're --

10 A. One was a state, and one was Federal.

11 Q. Okay. And after consulting with you, neither one of them
12 decided to call you, did they?

13 A. Right.

14 Q. Okay. And in fact, Judge Fuste is allowing you to
15 testify here in court as an expert in front of this jury; but
16 many, many judges that you have gone in front of who have
17 listened to your credentials and listened to your theories and
18 listened to your opinions have shall we say declined to allow
19 you to testify in front of juries, correct?

20 A. That would be true for the '80s and '90s. And in recent
21 years as people have become aware of the issues and the issues
22 of eyewitness evidence, I've been accepted most of the time.

23 Q. Okay. So the answer to my question is yes, that many,
24 many times judges who have listened to your credentials, your
25 theories and your opinions have declined to let you testify in

1 front of the juries, in front of them, correct?

2 A. Over 40 years, yes.

3 Q. Now, let's talk about the -- you mentioned there were
4 studies that were done as stranger stranger events. And
5 Mr. Ruhnke asked you certain hypotheticals. Now, if an
6 individual has known the perpetrator much of his life, and
7 gets a good opportunity to view the perpetrator, and
8 recognizes him immediately, pretty good ID?

9 A. Well, again, there's no research that I'm aware of. It's
10 all on stranger recognition.

11 Q. Right.

12 A. So I would say that's the jury's decision.

13 Q. But you have -- nothing that you've said here then has
14 any moment with regard to a person, an eyewitness who's
15 actually known the defendant, correct?

16 A. Well, I would -- the factors at the time of the crime
17 would still be relevant. The effect of having known him
18 beforehand, if that's the case, there's not research on that.

19 Q. Okay. So what I want to make sure we're really clear on
20 is even the situations that you're talking about, about
21 stress, and about perhaps they could get it wrong, and perhaps
22 it could be an honest mistake, and perhaps, perhaps, perhaps,
23 that's all based on studies on stranger-stranger, right?

24 A. Yes.

25 Q. So there have been no studies that you've done where it

1 is a relative, like a cousin who grew up with them, correct?

2 A. Correct.

3 Q. And there's been no studies that you're aware of where
4 there's a person who has known the individual from the
5 community from the time the individual was young, and would
6 see him every day, and maybe saw him once a week or so when he
7 was older, and saw him like two days before the event?
8 There's nothing like that that you are aware of, correct?

9 A. Not that I am aware of, yes.

10 Q. And when you were talking in terms of ear witnesses, you
11 were talking again, when you said -- when they do the -- the
12 ear witness identifications, where there are a group of people
13 in another room or over a microphone who say a particular
14 phrase, and the ear witness is not visibly able to see the
15 people but is trying to say that's the voice, I recognize that
16 voice, that's what you're talking about, those studies,
17 correct?

18 A. Yes.

19 Q. And those are stranger-stranger ones, too, correct?

20 A. Yes.

21 Q. So, if for instance there was a situation where a woman
22 knew a perpetrator very well, had known him most of her life
23 or much of her life, and who was shot and lying on the floor.
24 And then there's a pause, and then she hears the voice of the
25 person that she has known much of her life shouting, no one

1 gets out alive. And that woman believes she's about to meet
2 her maker. Not much of a chance she gets that one wrong, is
3 there?

4 A. Again, I don't know. There's not research on ear
5 witnesses in that kind of a situation.

6 Q. Okay. And, Doctor, let's talk for a minute about
7 corroboration, because what you're telling us here, as I
8 understand it, is with regard to stranger-stranger things,
9 this is just a person who gets a glimpse at somebody who they
10 didn't know before, perhaps cross racial, perhaps in the dark,
11 perhaps with their face partially covered up, and all those
12 things. But let's talk for a minute about corroboration,
13 okay?

14 A. Okay.

15 Q. Now, if a person is identified, positively identified by
16 two, not one but two different people who know him, know his
17 name, know his name, and he's identified independently by
18 those two different people -- are you with me so far?

19 A. (Nodding head up and down.)

20 Q. Yes?

21 A. Yes.

22 Q. And then is identified in addition to that by a third
23 person that was a stranger-stranger situation, right? Didn't
24 know him from before. And that person independently,
25 independently picks that individual out of a photo array, are

1 you with me still?

2 A. Yes.

3 Q. And then two days later that same individual who has an
4 -- or will be identified by these three witnesses that I've
5 told you about, is found in constructive possession of three
6 firearms with a relative, a cousin --

7 MR. AGUAYO: Your Honor, I'm going to object to the
8 --

9 THE COURT: Overruled. Overruled.

10 BY MR. HEGYI:

11 Q. Is found in constructive possession approximately two
12 days later of three firearms with his cousin, and one of those
13 firearms is matched ballistically to that very same crime
14 scene, and are determined to have left 20 shell casings right
15 there on the scene in the location where two of the people,
16 the general location where two of the people say they saw that
17 person, and then three projectiles or partial projectiles from
18 that same firearm are found on that scene, pretty darn good
19 and positive evidence that those identifications were
20 absolutely spot on; isn't that right?

21 A. Well, certainly there's no research that comes anywhere
22 near to matching that combination of situations that you've
23 mentioned. What I can talk about are those factors that have
24 been generally found to be important and to effect people's
25 identifications.

1 Again, I think it's a jury question how that
2 information, along with whatever other information specific to
3 the case is available, that's the jury's task from my
4 perspective to put that all together and decide what to do
5 about it.

6 THE COURT: But, Dr. Brigham, listen to me, sir.

7 THE WITNESS: Yes.

8 THE COURT: Yesterday when I examined you here with
9 the lawyers, that same kind of question, you said pretty good
10 identification. Isn't that so?

11 THE WITNESS: As a -- as a lay person looking at it,
12 that's what I would think, yes.

13 THE COURT: That's what you told me yesterday.

14 THE WITNESS: Yes. As a lay person, but -- okay.

15 MR. HEGYI: Nothing further, Your Honor.

16 MR. RUHNKE: I have a couple questions, Your Honor,
17 if I may.

18 THE COURT: A couple of questions at the most. I
19 think we have covered this.

20 MR. RUHNKE: Sure.

21 FURTHER EXAMINATION

22 BY MR. RUHNKE:

23 Q. In cross-examining you, Mr. Hegyi talked about your
24 theories. Are the theories you've described to us today your
25 theories?

1 A. No. They're theories that have been developed in
2 psychology on the basis of research by myself, but many, many
3 other people as well. So they're not theories I have invented
4 myself. They are theories that are widely recognized and
5 accepted within the research community.

6 Q. And in a situation where someone is somewhat familiar
7 with a subject, witnesses this traumatic, traumatic event
8 under the circumstances we've described, and as we said
9 before, is then exposed to a slew of post-event contamination
10 in the newspapers --

11 THE COURT: Mr. Ruhnke, I'm sorry. You already asked
12 this question before. That's it.

13 MR. RUHNKE: I'm asking a different question.

14 THE COURT: No.

15 MR. RUHNKE: It will be a different question.

16 THE COURT: Different question, yes. Not the same
17 question.

18 MR. RUHNKE: Yes. It will be a different question.

19 BY MR. RUHNKE:

20 Q. Would you want to know how that person is familiar with
21 the subject identified, how many times they've seen them, when
22 was the last time they saw them, when was the last time they
23 spoke with him, all questions like that? Would that be
24 relevant?

25 MR. HEGYI: Your Honor, I'm going to object.

1 THE COURT: Sustained.

2 MR. HEGYI: He said he's not an expert in that.

3 THE COURT: Sustained.

4 MR. RUHNKE: Okay. I withdraw it.

5 MR. AGUAYO: I just have one, if I may.

6 THE COURT: One. One.

7 MR. AGUAYO: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. AGUAYO:

10 Q. Sir, the example that the prosecutor gave you and your
11 response, that's based on the information or the way he
12 phrased that request, correct?

13 A. Correct.

14 MR. AGUAYO: No further questions.

15 THE COURT: Thank you very much. You are now
16 excused, sir.

17 (At 9:59 AM, witness excused.)

18 THE COURT: Members of the jury, I should tell you
19 that one of the areas of instruction you will get is an
20 instruction on identification from the Court.

21 Next witness, please.

22 MR. AGUAYO: Yes, Your Honor. Mr. Alvin Aponte, sir.

23 COURTROOM DEPUTY: Raise your right hand.

24 Do you solemnly swear that the testimony you are
25 about to give in this case is the truth, the whole truth, and

1 nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 MR. AGUAYO: May I begin, Your Honor?

4 THE COURT: Please.

5 A L V I N A P O N T E M A R R E R O,
6 called as a witness by Defendant Oquendo Rivas, having
7 been sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. AGUAYO:

10 Q. Sir, would you please state your name for the record?

11 A. Alvin Aponte Marrero.

12 Q. And are you employed, sir?

13 A. Yes, sir.

14 Q. And what are you employed as?

15 A. I currently work as a private investigator.

16 Q. Previous to your job a private investigator, what did you
17 do?

18 A. I worked in different law enforcement agencies in Puerto
19 Rico.

20 Q. Could you give us some examples?

21 A. Yes. I worked for the Puerto Rico Police. I also worked
22 for the NIE. It's an acronym in Spanish for (Remarks in
23 Spanish), Special Investigations Bureau. And also for the
24 FEI, Independent Prosecution.

25 Q. Okay. So now you're working as a private investigator,

1 correct?

2 A. That's correct.

3 Q. Approximately last week or a week and a half before, did
4 I assign you a task?

5 A. Yes, sir.

6 Q. All right. And would you tell us what that task was?

7 A. Yes. You gave me a diagram or a picture of a diagram so
8 that I would go to La Tombola in Toa Baja and take some
9 measurements.

10 Q. Okay. Sir, I'm showing you what's identified as
11 Defendant's ID Four. Do you know what that is, sir?

12 A. Yes. This is a copy of the diagram that you gave me.

13 Q. And that's the area -- what area is reflected there, sir?

14 A. The area of La Tombola and its -- the surrounding areas,
15 the street areas.

16 MR. AGUAYO: All right. Your Honor, I would like to
17 have that admitted, please.

18 THE COURT: Any objection to that?

19 MS. DOMINGUEZ: No objection.

20 MR. HEGYI: No objection, Your Honor.

21 THE COURT: Very well.

22 (At 10:03 AM, Defendant Oquendo's Exhibit Four
23 admitted into evidence.)

24 MR. HEGYI: There is Spanish written on there, so we
25 assume there will be a translation, but we have no

1 objection.

2 THE COURT: He wants it for the measurements. Go
3 ahead.

4 MR. AGUAYO: It's for the measurements, Your Honor.

5 BY MR. AGUAYO:

6 Q. Can you see that, sir?

7 A. Yes, sir.

8 Q. Now, what exactly did I ask you to do?

9 A. To measure the area where the frying stand was up to the
10 edge of Bravo Street.

11 Q. Okay. And I see here you have different numbers, one,
12 two, three, four, five and six, correct?

13 A. That's correct.

14 Q. All right. Can you explain to us what those numbers
15 mean?

16 A. Those numbers identify the different measures --
17 measurements that I took.

18 Q. All right. If you look at number one, sir, from the
19 fritura stand -- I'm sorry. This area here, this would be
20 Bravos Street, correct?

21 A. Yes, sir.

22 Q. And this street here would be Calle Progreso, correct?

23 A. Correct.

24 Q. All right. Let's go to the first one. From the fritura
25 stand to number one, the Bravo Street, how many feet is that?

1 A. I submitted you a report with the measurements, and if
2 you'd please facilitate that to me, I can answer. I don't
3 have one.

4 MR. AGUAYO: May I, Your Honor?

5 BY MR. AGUAYO:

6 Q. All right. So the number one, from the fritura stand to
7 the Bravos Street.

8 A. Yes. From the wall where the fritura stand was to the
9 edge of Bravo Street, that gave me a measurement of 58 feet
10 and two inches.

11 Q. And let's go to number two.

12 A. Yes. From that same wall to the edge of Bravos Street,
13 that gave me a measurement of 58 feet and three inches.

14 Q. And number three?

15 A. Yes. You will notice that in number three I made the
16 drawing of a little square. That reflects an entry gate that
17 is there. If you look at this gate with your face to it, you
18 will see that there is a pipe on the right. From that to the
19 edge of Bravo Street, that measurement was 57 feet.

20 Q. All right. Number four, sir?

21 A. That's -- number four is from the business wall up to the
22 edge of Bravo Street. That gave me a measurement of 56 feet
23 and seven inches.

24 Q. And number five, sir?

25 A. That's from the edge of the business itself up to Bravo

1 Street's edge. That lead to -- that gave me a measurement of
2 57 feet and eight inches.

3 Q. And finally, number six, sir.

4 A. (Remarks in Spanish.)

5 Q. All right.

6 A. From the corner of the wall of the business to the edge
7 of Bravo Street, that gave me a measurement of 56 feet and
8 four inches.

9 Q. Sir, I'm giving you what has been marked for
10 identification as Defendant's Five. Is that the measurements
11 that correspond to what's on the croquis?

12 A. Yes, sir.

13 Q. So those measurements would accompany, in order to
14 understand that croquis, you would use those measurements on
15 that document to reflect the measurements that are on the
16 croquis, correct?

17 A. Correct.

18 MR. AGUAYO: Your Honor. I'd like to have this in
19 evidence also, Your Honor.

20 MR. HEGYI: Your Honor, no objection, with the
21 translation. No objection.

22 THE COURT: Well, let's put them together.

23 MR. AGUAYO: Yes, sir.

24 THE COURT: Clip them together, both. Received.

25 (At 10:09 AM, Defendant Oquendo Rivas Exhibit Five

1 admitted into evidence.)

2 BY MR. AGUAYO:

3 Q. Now, sir, during the investigation of this case, did I
4 also ask you to prepare a video?

5 A. Yes, sir.

6 Q. All right. Can you explain to the members and ladies and
7 gentlemen of the jury how that was done, sir?

8 A. Yes. On December 11, 2012, with Attorney Aguayo, we went
9 over to Bayamon to see Mr. Malave.

10 Q. Who is Mr. Luis Malave, sir?

11 A. The -- Mr. Luis Malave was the security officer that was
12 working in the Las Gaviotas subdivision.

13 MR. HEGYI: Objection, Your Honor. This is going to
14 be hearsay.

15 MR. AGUAYO: No, Your Honor.

16 THE COURT: I don't think it's being offered to prove
17 the veracity of the content.

18 MR. AGUAYO: No.

19 THE COURT: Actually, Mr. Malave is going to testify,
20 correct?

21 MR. AGUAYO: Yes, Your Honor.

22 THE INTERPRETER: I'll complete my answer in English.
23 After the events of La Tombola occurred, after Las Gaviotas.

24 BY MR. AGUAYO:

25 Q. I'm sorry. Did you finish?

1 THE INTERPRETER: (Nodding head up and down.)

2 BY MR. AGUAYO:

3 Q. So we picked up Luis Malave. Where did we go to?

4 A. We went over to Las Gaviotas subdivision to make the
5 video.

6 Q. Okay. And what did we do?

7 A. Well, we took three takes of Las Gaviotas. The first
8 take was of the route that he did that night. The second take
9 was the Las Gaviotas perimeter, in its -- inside of it. The
10 third take was the outside perimeter of Las Gaviotas.

11 Q. All right. Do you have that tape with you, sir?

12 A. Yes, sir.

13 MR. AGUAYO: May I have that marked for
14 identification?

15 BY MR. AGUAYO:

16 Q. Sir, I'm showing you what has been identified as
17 Defendant's ID Six. Would you tell us what that is?

18 A. This is the video that was made from the tasks that we
19 performed at Las Gaviotas.

20 Q. And after you made that videotape, did you -- were you
21 able to look at it immediately thereafter?

22 A. Correct.

23 Q. So you saw the three (Remarks in Spanish)?

24 THE INTERPRETER: Takes.

25 BY MR. AGUAYO:

1 Q. I'm sorry.

2 A. Correct.

3 Q. All right. And prior to coming here to testify here
4 today, were you able to see that video again?

5 A. That's correct.

6 Q. And the contents of the video that you reviewed prior to
7 coming here to testify, is it the same contents of the video
8 you took on that particular day?

9 A. The same.

10 MR. AGUAYO: We would move to have it entered into
11 evidence.

12 MS. DOMINGUEZ: May we approach?

13 THE COURT: Please.

14 (Bench conference held.)

15 THE COURT: You've seen it?

16 MS. DOMINGUEZ: We've never seen it.

17 MR. HEGYI: We never knew it existed. And he told us
18 he gave us all of the reverse Jencks.

19 MR. AGUAYO: No, Your Honor. This is really --

20 THE COURT: Was there a motion for reciprocal
21 discovery?

22 MS. DOMINGUEZ: Yes.

23 MR. HEGYI: Yes.

24 THE COURT: Was it agreed by the Court?

25 MR. HEGYI: We sent e-mails back and forth, and they

1 | agreed.

2 | THE COURT: Is that true?

3 | MR. AGUAYO: That is true. I gave the reciprocal
4 | discovery to Julia Diaz. An agent came to the office to pick
5 | it up.

6 | THE COURT: You're telling me Julia Diaz had the
7 | video?

8 | MR. AGUAYO: Yes.

9 | MS. DOMINGUEZ: I don't question Mr. Aguayo's
10 | representation.

11 | THE COURT: It's okay.

12 | MR. HEGYI: But he provided us with reverse Jencks
13 | for witnesses as they were going to appear on the stand. He
14 | never made -- first of all, I'm not saying he didn't do that.
15 | Ms. Diaz Rex is no longer part of the case, as the Court
16 | knows. But he didn't identify for us it was something he was
17 | going to use today or it had been provided.

18 | MR. AGUAYO: I gave it to Julia Diaz. She sent an
19 | agent over, picked it up. What more do I have to do?

20 | THE COURT: Well, that's true. Make a telephone call
21 | to Julia Diaz and inquire.

22 | MR. AGUAYO: And let me make a telephone call to my
23 | office, because I'm sure my secretary has a receipt.

24 | THE COURT: Okay.

25 | MR. AGUAYO: Because I told Julia Diaz to come to my

1 office, as they do from me to them, come to the office,
2 discovery's ready. She didn't come personally, but it was an
3 agent. We should have a receipt.

4 Now, this video's not going to be put on until Luis
5 Malave.

6 MR. HEGYI: So we would have a chance to take a look
7 at it.

8 THE COURT: We're not going to watch it now?

9 MR. AGUAYO: No.

10 THE COURT: Okay. Perfect. Perfect. That's good.
11 (Bench conference concluded.)

12 MR. AGUAYO: That would be all, Your Honor.

13 THE COURT: That's it for the time being, Mr. Aguayo?

14 MR. AGUAYO: Unless there's cross.

15 THE COURT: No, but you, that's it?

16 MR. AGUAYO: I'm finished.

17 THE COURT: Okay. Mr. Hegyi, anything?

18 MR. HEGYI: Could I get Defendant's Four and Five,
19 please?

20 MR. AGUAYO: Oh, I'm sorry, Your Honor. Did I
21 move -- I requested the video be moved into evidence.

22 THE COURT: We are going to defer until we hear
23 Mr. Malave. Okay.

24 MR. AGUAYO: No problem.

25 CROSS-EXAMINATION

1 BY MR. HEGYI:

2 Q. Good morning, sir.

3 A. Good morning.

4 Q. First of all, when you went out to the -- what used to be
5 the La Tombola building back in 2009, that is now a church,
6 correct?

7 A. I didn't go to La Tombola in 2009.

8 Q. No. Today -- you went, according to your report, sir, it
9 looks like you went sometime in February of this year.

10 A. That's correct.

11 Q. In February of this year, it's now a church, correct?

12 A. Nothing is there now. It's closed. To me it's the same
13 thing that it used to be, a business.

14 Q. Okay. Now, did you -- was the fritura stand, was it
15 there still when you went there in February of 2013?

16 A. The area is there.

17 Q. Sure. That wasn't my question, though. Was the fritura
18 stand still there?

19 A. The stand, sale stand, as such, no, it's not there.

20 Q. In this case, you're aware that the police took about 880
21 photographs of the crime scene in this case. Did Mr. Aguayo
22 show you any of the photographs showing you where the fritura
23 stand actually was?

24 A. I saw some.

25 Q. Okay. And in the ones that you saw, sir, did you notice

1 that, for instance, you've done -- on defense Exhibit Number
2 Four, which is in evidence in this case, all of your
3 measurements go to the actual wall of the building, at what
4 used to be La Tombola, correct?

5 A. Exempt number three.

6 Q. Okay. And number three goes up almost to the wall; is
7 that what you're saying?

8 A. That's correct.

9 Q. So if the fritura stand in fact covered this whole space
10 or most of this entire space here, between what is marked on
11 this as La Tombola and what is marked here to the right of it
12 as residencia, you're not able to help us because you didn't
13 take any of the measurements from what would have been the
14 right side of where the fritura stand was, correct?

15 A. From the right side, no.

16 Q. Now, the video that you did was done in -- which I guess
17 is Defense Exhibit Number Six for identification, that was
18 done in December, I think you said December 11 of 2012,
19 correct?

20 A. Yes. Yes, sir.

21 Q. And just like the La Tombola, and you didn't know what
22 the La Tombola looked like in September of 2009, you don't
23 have any idea -- you can't help us with what the subdivision
24 there, Las Gaviotas --

25 THE COURT: Gaviotas.

1 BY MR. HEGYI:

2 Q. Gaviotas. You can't help us with what that looked like
3 in September of 2009, can you?

4 A. Not exactly, because I didn't go to Las Gaviotas on that
5 date.

6 Q. Right.

7 A. But from what Malave told me it looked --

8 Q. I'm not asking what he told you.

9 THE INTERPRETER: I have to enter the answer into the
10 record.

11 MR. HEGYI: But I'm objecting to the hearsay part.

12 THE COURT: We have to have it in the record.

13 THE WITNESS: According to what Malave told me, that
14 was the general aspect of it.

15 THE COURT: Sustained as hearsay.

16 MR. HEGYI: Move to strike as hearsay.

17 THE COURT: Go ahead.

18 BY MR. HEGYI:

19 Q. The video you took was in December 2012, more than three
20 years after La Tombola?

21 A. That's correct.

22 MR. HEGYI: Nothing further, Your Honor.

23 THE COURT: Thank you very much.

24 MR. AGUAYO: I just have one -- a couple, Your Honor,
25 if I may. May I have the exhibits?

1 BY MR. AGUAYO:

2 Q. Sir, let's assume for a second that the fritura stand is
3 in this area here, okay?

4 A. Correct.

5 Q. Given the measurements which you took to Bravos Street,
6 from here, the fritura stand, to Los Bravos, that would
7 certainly be more than five or six feet, correct?

8 A. Many more.

9 Q. About 50?

10 A. Practically, yes.

11 Q. All right. Thank you. I have no questions. However, we
12 have the letter, the letter about the video?

13 THE COURT: I understand.

14 MR. AGUAYO: Can we approach the bench?

15 THE COURT: Sure. You are now excused, sir.

16 MR. AGUAYO: Yes. I have no more questions.

17 THE WITNESS: Thank you.

18 (At 10:23 AM, witness excused.)

19 (Bench conference held.)

20 MR. AGUAYO: Here. And this.

21 MS. DOMINGUEZ: And we verified that Ms. Diaz did
22 receive the video.

23 THE COURT: You received it.

24 MS. DOMINGUEZ: And we did not question at all
25 Mr. Aguayo's representation.

1 THE COURT: Okay. That's fine. We're done.

2 (Bench conference concluded.)

3 THE COURT: Mr. Aguayo, any additional evidence?

4 MR. AGUAYO: Yes, Your Honor. If I may.

5 Yes, Your Honor. The defense would call Johanna
6 Marie Lopez Urquia, U-r-q-u-i-a.

7 THE COURT: Please stand up and raise your right
8 hand.

9 Do you solemnly swear that the testimony you are
10 about to give in this case is the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 MR. AGUAYO: May I begin, Your Honor?

14 JOHANNA MARIE LOPEZ URQUIA,
15 called as a witness by Defendant Oquendo Rivas, having
16 been sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. AGUAYO:

19 Q. Madam, what is your name?

20 A. Johanna M. Lopez Urquia.

21 Q. And what is your age, ma'am?

22 A. 28.

23 Q. And how far did you go in school, ma'am?

24 A. I have completed a technical degree in medical billings,
25 and I have approximately 86 credits in publicity and public

1 relations.

2 Q. From what school?

3 A. From the Sacred Heart University.

4 Q. Madam, in October of 2009, were you employed?

5 A. No.

6 Q. Okay. Madam, what is your marital state?

7 A. I am single, but I am the consensual partner of David
8 Oquendo.

9 Q. Do you see that person, David Oquendo, here?

10 THE COURT: There's no need. No need.

11 MR. AGUAYO: All right.

12 BY MR. AGUAYO:

13 Q. How long have you known David Oquendo Rivas?

14 A. Approximately 15 to 16 years.

15 Q. All right. And how long have you had a consensual
16 marriage with David Oquendo Rivas?

17 A. Between four and five years.

18 Q. Do you have children with him?

19 A. One girl.

20 Q. And how old is she now?

21 A. Four years old.

22 Q. Back in October of 2009, how old was she?

23 A. She was approximately eight months old.

24 Q. Now, madam, where do you reside?

25 A. At the Las Gaviotas development in Toa Baja.

1 Q. And how long have you lived there, ma'am?

2 A. Approximately 20 years.

3 Q. So you lived there on October 17, 2009, correct?

4 A. Yes.

5 Q. And who else lived at that house at Las Gaviotas?

6 A. For that -- on that date?

7 Q. Yes. October 17, 2009.

8 A. Okay. Living at that house were myself, our daughter,
9 and my husband, my mom, my sister, and my brother.

10 Q. Okay. And who does that house belong to?

11 A. To my mom and my dad.

12 Q. And how much time had David Oquendo lived at that
13 residence?

14 A. Approximately about one year.

15 Q. Now, did he always stay at that residence? Did he sleep
16 over at that residence every night?

17 A. No.

18 Q. Where else would he stay at?

19 A. At his parents' house.

20 Q. Okay. But in terms of did he stay more with you at that
21 residence where you lived or did he stay more with his
22 parents?

23 A. He would spend more time, stay more time in my residence.

24 Q. Okay. Now, Ms. Lopez, did you know that David Oquendo
25 had a firearm?

1 A. Yes.

2 Q. How did you find out about it?

3 A. Because on one occasion I saw it on the floor of our SUV.

4 Q. Okay. And that was a .45?

5 A. I have no knowledge about firearms. I don't know if it
6 was that type.

7 Q. And what, if anything, did you do? How did you react
8 when you saw that firearm?

9 A. When I saw the firearm on the floor of the SUV, I got
10 quite upset. I got quite upset, and I told him to please get
11 rid of that firearm.

12 Q. Would you have allowed him to enter that firearm into
13 your home?

14 A. Never, for my safety and for the safety of my daughter,
15 and my family.

16 Q. You know that David Oquendo was arrested on October 20th
17 for possession of a firearm, correct?

18 A. Yes, correct.

19 Q. I'm sorry. 2009. October 20, 2009, correct?

20 A. Correct.

21 Q. And did you know that the gun that he had in his
22 possession was a .45 caliber?

23 A. Excuse me?

24 Q. Did you know that the gun that he had in his possession
25 was a .45 caliber pistol?

1 A. No, I did not know.

2 Q. And what was your reaction to his arrest?

3 A. Upset, very upset.

4 Q. Why were you upset, ma'am?

5 A. Because he continued having a firearm in spite of the
6 fact that I had told him to get rid of it.

7 Q. Okay. Now, I'm drawing your attention -- oh, is David
8 Oquendo, for that time period of October of 2009, was he
9 employed?

10 A. Yes.

11 Q. And what was he employed as? What did he do?

12 A. He worked with his dad in a gardening business. He also
13 worked with a Sure Bond business which is engaged in the
14 business of washing roofs and floorings, cobblestones. Sure
15 Bond. Sure Bond. And he also worked with a company that was
16 engaged in remodeling the inside of offices with gypsum board.

17 Q. Ma'am, you know, I call your attention to October 17th,
18 2009. Do you remember that day?

19 A. Yes, I do.

20 Q. What did you do that afternoon, madam?

21 A. That afternoon we went to exchange the cell phones that
22 belonged to my sister and her then boyfriend.

23 Q. When you say we, who are you referring to?

24 A. I went with my daughter, my sister's bestfriend, and her
25 daughter, and my sister, and her then boyfriend.

1 Q. And you went to -- said something about some cell phones?

2 A. Okay. On that afternoon, we went to change both of their
3 cell phones to Sprint at Plaza Del Sol. After that we went to
4 the Vaca Brava restaurant.

5 Q. And where is that located, ma'am?

6 A. In Barranquitas.

7 Q. All right. And do you recall what time you arrived
8 there?

9 A. To the restaurant?

10 Q. Yes, to the restaurant, ma'am.

11 A. We arrived at the restaurant approximately between 3:30
12 and 4:00, more or less.

13 Q. Okay. And what time did you leave there, approximately?

14 A. We left -- we left at about 6:00, no, about 6:30, more or
15 less. I don't recall the time exactly.

16 Q. All right. And where were you going to from the
17 restaurant?

18 A. When we left the restaurant, we continued on to my house.

19 Q. All right. Did you arrive at the house, ma'am?

20 A. Yes, we arrived at my house.

21 Q. And once you arrived at the house, what happened?

22 A. When we arrived at my house, my mom was waiting for us.
23 When we arrived at the house, she was very upset waiting at
24 the gate, because it was the first time that we had gone to
25 that restaurant, and we had not invited her to go with us.

1 Q. Okay. And what happened after that? I'm sorry. I'm
2 sorry. Prior to your arriving at the house, did you call
3 David Oquendo?

4 A. Yes. We were in communication when we were coming down
5 from the restaurant.

6 Q. And what, if anything, did you tell him?

7 A. That we had already left the restaurant, and that we were
8 headed home.

9 Q. Okay. Do you know where he was?

10 A. At his parents' house.

11 Q. Okay. Now, you arrived at the house. You greet your
12 mom. What happened after that?

13 A. Everyone went to their respective room.

14 Q. Okay. Now -- I'm sorry. Did David Oquendo eventually
15 come home?

16 A. Yes, approximately between 9:00 and 9:20.

17 Q. And how did he arrive? On a bicycle? On a car? How did
18 he arrive?

19 A. In his SUV.

20 Q. And what kind of SUV is that?

21 A. It was a dark gold Ford Explorer.

22 Q. Okay. And how did you know that he had arrived?

23 A. Because when he arrived, he didn't have a key to the
24 house, and I had to go out to open the gate for him.

25 Q. All right. And when you opened the gate, did you open

1 the gate --

2 THE COURT: I'm sorry. I'm sorry. Was it, I think
3 she said (Remarks in Spanish.) That's what she said?

4 THE INTERPRETER: I believe so, Your Honor.

5 THE COURT: You said that he didn't have the key.
6 One thing is (Remarks in Spanish), another one is I didn't
7 have the key.

8 THE INTERPRETER: I stand corrected, Your Honor.

9 THE COURT: Okay. So what is the answer?

10 THE WITNESS: That he called me when he was about to
11 arrive at the house in order for me to open the gate for him
12 then, because he did not have a key to get in.

13 THE COURT: Where were his keys?

14 THE WITNESS: He never had a key to the house.

15 THE COURT: Very well.

16 BY MR. AGUAYO:

17 Q. And why didn't he have a key to the house?

18 A. Because I didn't work, and I was always at the house.

19 And there wasn't the need for him to have a key.

20 Q. Okay. Now, so if I'm not mistaken, you stated that he
21 arrived in his vehicle, and then you went to open porton (ph),
22 the gate?

23 A. Yes.

24 Q. All right. And what does David do?

25 A. He was approaching, walking from the corner, because he

1 would always leave his vehicle parked at the corner. And he
2 would walk along the sidewalk from the corner until he reached
3 the house.

4 Q. All right. And once he reaches the house, what happens?

5 A. We went into the bedroom, because he was going to get
6 clothing in order to shower, to bathe.

7 Q. All right. When he comes into the house or when he gets
8 his clothing to bathe, does he see anyone or is there anyone
9 that you see?

10 THE INTERPRETER: The interpreter needs a repetition.

11 BY MR. AGUAYO:

12 Q. When he gets home and goes into the room to get clothes,
13 to take a shower or bath, is there anyone else in the house
14 that you see?

15 A. Yes. Yes. When he was going to go bathe, he said hello
16 to my sister and to my mom.

17 THE COURT: Why would he park in the corner and not
18 in front of the house?

19 THE WITNESS: Because at my house I had a car, my mom
20 had a car, my sister had a car, and my brother had a car. And
21 in order not to interrupt the neighbor's area, one would park
22 as one would arrive. If the vehicles were such that there was
23 no longer any room for anyone else to park, the last one to
24 arrive would park at the corner.

25 MR. AGUAYO: May I continue, Your Honor?

1 BY MR. AGUAYO:

2 Q. Where were we? Does he go take a shower?

3 A. Yes, he went and showered.

4 Q. And after he showered, what, if anything, happened to
5 David?

6 A. After he left the bathroom, he went to the bedroom again.
7 And then he called my sister, because my sister was going to
8 show him some music videos.

9 Q. Okay. When you say he called your sister, how did he
10 call your sister?

11 A. Over the phone.

12 Q. Why, if they're in the same home, are they calling by
13 phone?

14 A. Because she was in her room, and we were in ours.

15 Q. Okay. So he calls her and what happens?

16 A. My sister then comes to our room in order to show him the
17 video that they were going to see.

18 Q. Okay. And did they watch the video?

19 A. He saw the video. I was watching a TV program.

20 Q. Okay. And after they watched the video, what happens
21 with your sister? What's her name, by the way?

22 A. Clayivinet Lopez.

23 Q. Okay. So do you also call her Clayi?

24 A. Clayi.

25 Q. Clayi. So after they watched the video, Clayi goes back

1 to her room?

2 A. After seeing the video, she left our room.

3 Q. By the way, where was the baby?

4 A. With us in the room, sleeping in her crib.

5 Q. All right. Now, at approximately 11:50 PM, near
6 midnight, what, if anything, happened?

7 A. I received a call from one of the neighbors in order for
8 her to learn whether we knew what was happening.

9 Q. And what happened?

10 A. We went outside, because we also did not know what was
11 happening. When we went out, we saw that my mom, my sister,
12 and my brother also came out. I went out with David and my
13 daughter.

14 Q. All right. And did you see anybody outside?

15 A. Yes. When we went out to the area of the sidewalk, the
16 neighbor from in front of us came out. He came out
17 practically at the same time that we did. And he asked us
18 whether we knew what was going on. That he was taking care of
19 some kids, some children, and he heard a loud noise. The
20 front neighbor. But the one on the left was also there.

21 Next to my house, there was also a party going on
22 that -- so that there were people going in and out.

23 Q. Okay. Now, you're outside, and while you're outside,
24 what are you all doing?

25 A. We were talking with the front neighbor saying that

1 something had been heard, but no one knew what had been heard.
2 My mom and my sister went in. And my brother, myself and my
3 daughter stayed outside, as well as David.

4 Q. All right. Let me ask you something before we proceed.
5 This neighbor that was in front, have you tried to talk to him
6 about the events of today? I mean, I'm sorry, the events of
7 October 17, 2009?

8 A. On one occasion I tried to talk to him.

9 Q. And what happened?

10 MS. DOMINGUEZ: Objection, hearsay.

11 THE COURT: Sustained.

12 MR. AGUAYO: All right. No problem.

13 BY MR. AGUAYO:

14 Q. As a result of what he told you, he's not here to
15 testify, correct?

16 A. Correct.

17 Q. Let's talk about the neighbor, on the side.

18 A. Are you talking about the neighbor in front, towards the
19 side or the one nextdoor?

20 Q. We already talked about the neighbor in front. Let's
21 talk about the neighbor to your side, el lado (ph) All right?

22 A. (Remarks in Spanish.)

23 MS. DOMINGUEZ: Objection, hearsay, Judge.

24 THE COURT: Sustained.

25 BY MR. AGUAYO:

1 Q. No problem.

2 THE INTERPRETER: The interpreter didn't get that for
3 the record, Your Honor.

4 THE COURT: Put it in the record, please.

5 THE WITNESS: The neighbor nextdoor doesn't remember,
6 because he had been drinking.

7 THE COURT: Well, okay. I already sustained the
8 objection. That's hearsay, not admissible.

9 BY MR. AGUAYO:

10 Q. All right. Let's continue. So you're outside, with
11 David.

12 THE COURT: Let's take a short five minute recess so
13 we can deal with something here.

14 MR. AGUAYO: Thank you, Your Honor.

15 (At 10:52 AM, jurors left the courtroom.)

16 MR. AGUAYO: Your Honor, if you could tell her not to
17 talk to anybody.

18 THE COURT: She knows that. You'll tell her.

19 (At 10:52 AM, recess taken.)

20 (At 11:10 AM, proceedings reconvened.)

21 THE COURT: Let's begin, Mr. Aguayo.

22 MR. AGUAYO: May I continue, Your Honor?

23 THE COURT: Yes.

24 BY MR. AGUAYO:

25 Q. Ms. Lopez, we had talked about the neighbor to the front

1 and the neighbor to the side. You had also talked about a
2 fiesta, party going on nextdoor, correct?

3 A. Correct. There was a party where there were a lot of
4 people coming in and going out.

5 Q. Did we ever try to contact them, to your knowledge?

6 A. Yes.

7 Q. All right. And were we successful in finding them?

8 A. We located them, but (Remarks in Spanish.)

9 MS. DOMINGUEZ: Objection, based on hearsay, Judge.

10 THE COURT: Sustained.

11 THE WITNESS: They didn't agree to.

12 MR. AGUAYO: All right.

13 THE COURT: Sustained.

14 BY MR. AGUAYO:

15 Q. Ms. Lopez, we're outside. Let's go back. October 17,
16 2009, you're outside with -- well, October 17th going into
17 October 18th, in the early morning hours, you're outside with
18 David, correct?

19 A. I was outside with David, our daughter, and my brother.
20 A little while after we were outside, that we were talking,
21 the security officer goes by. Security guard goes by.

22 Q. Do you know approximately how much time transpired from
23 the time that you were outside to when the security officer
24 comes by, more or less?

25 A. A while went by. I can't pinpoint.

1 Q. Now, what were you doing inbetween that time that you
2 went outside, and the security guard came by?

3 A. Well, we were talking about -- I was telling them about
4 when we went to the restaurant, the type of food that they
5 had.

6 Q. All right. Now, you mentioned that the security guard
7 came by. What's the name of the security guard?

8 A. Officer Malave.

9 Q. All right. And when he comes by, where are you?

10 A. We were outside of the house.

11 Q. All right. I'm sorry. All right. So Mr. Malave comes
12 by and in what vehicle is he in?

13 A. He was in the urbanization's official vehicle, which is a
14 white pick-up.

15 Q. And what, if anything, happened?

16 A. We were talking outside there, and when he went by that,
17 he stopped. He started talking to us.

18 Q. All right. And without telling us what he said, what was
19 the conversation about?

20 A. About what he had heard when he was at the security check
21 point.

22 Q. Okay. And approximately how long did you converse?

23 A. It was several minutes, because I was able to go in to
24 give my daughter to my sister. And when I came out, the
25 officer was still there, the guard was still there.

1 Q. Okay. And what happened afterwards with the guard?

2 A. He continued his rounds.

3 Q. Okay. Ms. Lopez, how was David dressed when he went
4 outside?

5 A. He was not wearing a shirt, and he had shorts on that
6 like go to the knee or halfway to the knee for like playing
7 basketball.

8 Q. All right. Now, after Mr. Malave leaves, what does David
9 do and you do?

10 A. David was smoking a cigarette, and he was calling his
11 brother on the phone.

12 Q. What's the name of his brother?

13 A. Ronnie Oquendo.

14 Q. And do you know why he was calling him?

15 A. Because he knew that he was going to go hang out that
16 night, and since no one knew what was going on, he wanted to
17 make sure that his brother was fine.

18 MS. DOMINGUEZ: Objection. Same objection, Your
19 Honor.

20 THE COURT: Well, but that's not hearsay really.

21 MS. DOMINGUEZ: Lack of foundation for her
22 knowledge.

23 THE COURT: Well, that's okay.

24 BY MR. AGUAYO:

25 Q. Was he able to reach him at any time?

1 A. Into the night.

2 Q. Okay. But he did reach him?

3 A. Yes, he did reach him.

4 Q. And was Ronnie okay?

5 A. Yes. (Remarks in Spanish.)

6 MS. DOMINGUEZ: Objection.

7 THE COURT: Sustained. Whatever Ronnie said was not
8 admissible.

9 MR. AGUAYO: All right, Your Honor.

10 THE INTERPRETER: Your Honor, may the interpreter
11 answer?

12 THE COURT: Yes.

13 THE WITNESS: He said that he was at Jungle, but that
14 he was fine, that he didn't know what was going on.

15 BY MR. AGUAYO:

16 Q. All right. Fine. Now once you finish talking to Malave,
17 the phone call, what do you and David do?

18 A. We went into the house. I got -- he went into the room.

19 I got our daughter. When I picked up my daughter, we went
20 into the room again. We started watching TV for a while.

21 David continued calling his brother, and then we went to bed.

22 Q. Now, Ms. Lopez, just a couple more questions. Ms. Lopez,
23 David is your consensual husband?

24 A. Yes.

25 Q. And he is the father of your daughter, who is now four

1 years old?

2 A. Yes.

3 Q. You love David?

4 A. Yes, I love him.

5 Q. Would you lie to this jury concerning what happened that
6 night in order to protect or save David?

7 A. I would never lie before the jury, before the Judge,
8 before anyone, because that was horrible.

9 Q. When you say horrible, you're talking about the events of
10 La Tombola?

11 A. Yes.

12 Q. Would you protect a person that supposedly was involved
13 in the events of La Tombola?

14 A. No one. I wouldn't be sitting here if I wasn't certain
15 that he was in my house with me.

16 MR. AGUAYO: I have no further questions, Your
17 Honor.

18 THE COURT: Any cross?

19 MS. DOMINGUEZ: Yes, sir.

20 CROSS-EXAMINATION

21 BY MS. DOMINGUEZ:

22 Q. Ma'am, you and I have never met and have never spoken
23 before; is that correct?

24 A. Correct.

25 Q. Now, you've told the members of this jury that David

1 Oquendo Rivas lived with you and your parents for
2 approximately the last four or five years before he was
3 arrested; is that accurate?

4 A. No. No.

5 Q. How long had you lived with him prior to his being
6 arrested?

7 A. One year approximately.

8 Q. And even for that year, he didn't live full-time with
9 you; is that correct?

10 A. He did not live all of the time with me.

11 Q. You've told us that part of the time he lived with his
12 parents?

13 A. Yes, part of the time he was with his parents.

14 Q. And do you know where his parents lived?

15 A. Yes, at Sector 26 in Toa Baja.

16 Q. And how close is that to where you live?

17 A. About five to ten minutes away.

18 Q. And you're familiar with a business that has been
19 referred to throughout your testimony as La Tombola?

20 A. Familiar?

21 Q. Well, you know where it is?

22 A. I don't understand the question.

23 Q. Do you know where it is? You've seen it before?

24 A. I have seen it once.

25 Q. Well, isn't that business about one or two minutes by car

1 from your home, by car?

2 A. It is several minutes away from the house by car.

3 Q. So you've only seen it once? Is that your testimony?

4 A. Correct.

5 Q. Now, during the year 2009, did I hear you correctly that
6 you were not employed but David was employed?

7 A. Correct.

8 Q. And I think you mentioned three separate jobs that he
9 had. One of which was gardening with his father, and then
10 remodeling offices, and cleaning floors?

11 A. Yes.

12 Q. And the remodeling offices job, who was that with?

13 A. The man's name, if I am not mistaken, is Yamil. Excuse
14 me. Hiram. Hiram.

15 Q. Okay. And do you know his last name?

16 A. No.

17 Q. Have you ever met him before?

18 A. Yes.

19 Q. And what about the cleaning floor business or job? Who
20 was that with?

21 A. I don't recall his boss' name, but it was in Levittown.
22 The offices were in Levittown.

23 Q. And how did David juggle those three jobs? Do you know
24 what hours he worked at each?

25 A. At Sure Bond, almost always if it wasn't during the day,

1 it could be during the very early morning hours. And the
2 gardening with his dad would be whenever there wasn't work for
3 him at Sure Bond or with the gypsum board.

4 And with Sure Bond, that was according to the
5 budget, according to the project. If it was a job that lasted
6 only one day, that was it, and that would be done. Not Sure
7 Bond. The interpreter's corrected. The gypsum board.

8 Q. So would it be fair to say that he had a flexible
9 schedule?

10 A. He was always working.

11 Q. He was always -- well, you said gardening with his father
12 was when he didn't have any other work?

13 A. Yes, but Sure Bond was an eight hour job, and if it was
14 that they didn't have work in the morning because the project
15 wasn't being done in the morning, they would do it in the
16 afternoon. And if they were short on personnel, he would do
17 the morning schedule and the afternoon as well.

18 Q. Well, because he was such a busy person, you would expect
19 on a week day between noon and 3:00 he'd be working, correct?

20 A. Do you mean 12:00 noon to 3:00 in the afternoon?

21 Q. Yes.

22 A. Yes.

23 Q. Now, did you know a cousin of David's by the name of
24 Christian Ortiz?

25 A. Yes.

1 Q. How well do you know him?

2 A. He was his relative.

3 Q. And you knew him because of the relationship that David
4 and Christian had?

5 A. Yes.

6 Q. And they were close?

7 A. They were cousins.

8 Q. But in addition to being cousins, were they close?

9 A. Yes.

10 Q. Now, you are aware, ma'am, that on October the 20th,
11 which is a Tuesday, a week day, David and Christian were
12 arrested? You are aware of that; is that correct?

13 A. Yes.

14 Q. And you know what time they were arrested?

15 A. It was during -- it was afternoon, day. I don't recall
16 the time exactly.

17 Q. Okay. And you were aware that David and Christian were
18 arrested in constructive possession of three weapons?

19 MR. AGUAYO: Objection, Your Honor. That's a legal
20 term, constructive possession. It would be unfair for her to
21 answer that.

22 MS. DOMINGUEZ: I'll rephrase that.

23 THE COURT: Why don't we call it possession. Plain
24 possession.

25 BY MS. DOMINGUEZ:

1 Q. And you are aware that David and Christian were arrested
2 in possession of three firearms?

3 A. That David was arrested with one weapon, and Christian
4 was arrested with two weapons.

5 Q. But they were together at the time? When they were each
6 possessing firearms, you are aware that they were together?

7 A. I wasn't there, but yes, that is what came out in the
8 media.

9 Q. Well, are you suggesting to us that you haven't discussed
10 this with David?

11 A. About?

12 Q. About his arrest with an illegal firearm.

13 A. Yes. When I went to the visit, we talked about that
14 subject. And I was very upset because, like I mentioned a
15 little while ago, I had told him to get rid of that weapon.

16 Q. So you know from your discussions with David that he and
17 Christian were together with three firearms when they were
18 arrested; is that correct? Is that correct?

19 A. No.

20 Q. You don't know that?

21 A. We only spoke about the fact that I was upset, because we
22 had said that he was going to get rid of those firearms. We
23 did not talk about whether it was one, two, or three firearms.

24 Q. So let me see if I understand your testimony, ma'am.

25 What was upsetting to you was that he hadn't listened to you

1 | when you told him to get rid of the firearm, but not the fact
2 | that he was arrested with an illegal firearm?

3 | A. Yes, I was upset by the fact that he hadn't -- that he
4 | hadn't gotten rid of the weapon due to my safety and our
5 | daughter's safety. And that this had wound up in his arrest.

6 | Q. And did it also upset you, the fact that this man that
7 | you lived with, the father of your daughter was in possession
8 | of an illegal firearm, was violating the law?

9 | A. Yes.

10 | Q. Were you bothered, not only that he didn't listen to you,
11 | but that he was breaking the law? Did that bother you?

12 | A. Of course.

13 | Q. And of course you were also aware that between 12:00 and
14 | 3:00 on October the 20th, or October the 19th, that David
15 | Oquendo Rivas was not doing gardening, or remodeling offices
16 | or cleaning floors when he was in possession of that firearm?

17 | A. No, because I knew where he was.

18 | Q. Well, the fact is, ma'am, that you didn't know where
19 | David was when he wasn't with you?

20 | A. He told me that he was going to his relative's house.

21 | Q. Of course all you knew was what David told you. But you
22 | didn't know whether that was true? Isn't that true?

23 | A. Yes, correct.

24 | Q. And of course David had lied to you, he'd been less than
25 | honest to you in the past? Isn't that true?

1 A. I don't understand your question.

2 Q. He hadn't been less than honest with you in the past? He
3 hadn't lied to you before?

4 A. With regard to the fact that he was with another girl.
5 That's all.

6 Q. Okay. Well, I'm not referring to that. Didn't he tell
7 you he would get rid of the gun?

8 A. Ah, okay.

9 Q. And he didn't?

10 A. He didn't do it.

11 Q. In fact, since you know that he was arrested on October
12 the 20th with a gun, you know that rather than getting rid of
13 the gun what he did was conceal it from you?

14 A. I never saw it again.

15 Q. So would it be a reasonable conclusion that then he was
16 concealing it from you?

17 A. No. Because I didn't get back into his vehicle. And
18 that was weeks before, the argument.

19 Q. Okay. So two scenarios are possible. Either he
20 concealed it from you, or he didn't conceal it from you and
21 you just simply didn't bother to follow up on whether he had
22 the gun still. But in any event, he was less than honest
23 with you about getting rid of it? You would agree with me
24 there?

25 A. It was my understanding that he had gotten rid of the

1 weapon.

2 Q. I understand that, and thank you for sharing that with
3 us, but I'd like you to answer my question. Whether he got
4 rid of the gun, didn't get rid of the gun, concealed it from
5 you or didn't, he was less than honest with you when he told
6 you that he would get rid of the gun?

7 A. Correct.

8 Q. Because you know that he didn't; is that correct?

9 A. I know of that after his arrest.

10 Q. All right. And so would your answer be yes, that he was
11 less than honest with you?

12 A. Yes.

13 Q. And based on the fact that he lied to you about getting
14 rid of the weapon, you know from that experience that you
15 can't always trust what David told you?

16 A. Could you repeat that question for me?

17 Q. You know that David had lied to you in the past, so you
18 couldn't really trust everything he told you?

19 A. I can trust.

20 Q. I'm sorry?

21 A. I can trust.

22 Q. You can trust him?

23 A. Yes.

24 Q. So even if he lied to you, you would still trust him,
25 correct?

1 A. Yes, correct.

2 Q. Of course. This is the father of your daughter? Yes?

3 A. He is my daughter's father, but not necessarily because
4 of that do I need to trust in him.

5 Q. And he's also the man that you love?

6 A. Yes.

7 Q. Now, understanding that you don't know much about
8 firearms, let me show you what's in evidence as Government
9 Exhibit 158 C. I'm going to show it to you, and then let me
10 know when you're done looking at it.

11 A. May I touch it?

12 Q. Absolutely. Okay. Are you done looking at it?

13 A. (Nodding head up and down.)

14 Q. I'm going to put it on the monitor.

15 A. Oh, sorry. Yes, I looked at it.

16 Q. If you could refer to the monitor, please. Could you
17 tell us whether that looks like the firearm that you saw in
18 David's car?

19 A. I only saw it once.

20 Q. I understand. Does that look like the weapon?

21 A. It was a weapon. I don't know whether it was small,
22 whether it was big. I didn't stop and look at it.

23 Q. Now, I'm going to represent to you that that's the weapon
24 that David was arrested with on October the 20th. And so is
25 it your testimony that you don't know whether that's the

1 | weapon you saw or whether it was an additional weapon that
2 | David had?

3 | A. No, that I can't pinpoint, whether that was the weapon
4 | that I saw in the SUV, because I did not stop to look at it.

5 | Q. Now, when you saw the weapon in David's car, where was
6 | it?

7 | A. On the floor of the seat.

8 | Q. What seat? The driver's seat? The passenger's seat?

9 | A. Passenger.

10 | Q. In the front or in the back?

11 | A. In the front.

12 | Q. Was it underneath the seat?

13 | A. By where you -- the foot rest. By where when you sit
14 | down, where you place your feet.

15 | Q. Okay. Now, did you know whether David had a permit to
16 | carry that gun?

17 | A. No.

18 | Q. You didn't know or he didn't?

19 | A. He did not have one.

20 | Q. Did you ask him if he had a permit?

21 | A. No, I didn't ask him.

22 | Q. But you know that he didn't?

23 | A. Yes, I know that he did not have one.

24 | Q. And do you know that in Puerto Rico it is a crime to
25 | carry or possess a weapon without a permit?

1 A. Yes, I know that. That is why I asked him to get rid of
2 the weapon.

3 Q. And when you say get rid of the weapon, what did you
4 expect him to do? To just dump it in a garbage can or how did
5 you expect him to get rid of that weapon? Or didn't you care
6 how he would get rid of it?

7 A. No. I only wanted, for my family's safety as well as
8 mine, for him to get rid of the weapon.

9 Q. And were you concerned about the safety of anyone David
10 should encounter while he was armed or just the safety of you
11 and your daughter?

12 A. I didn't think that he was going to encounter anyone
13 armed.

14 Q. Not that he should encounter anybody that was armed, but
15 that he, an armed person, should encounter someone.

16 A. That did not enter my mind. I was only thinking about me
17 and my family.

18 Q. Now, on October the 17th, 2009, you said that David
19 Oquendo got home at about 9:00 or 9:30 PM.

20 A. Approximately.

21 Q. Now, you've told us all about the -- what you did with
22 your day. So it's safe to assume you weren't with David
23 before you saw him at 9:00, 9:30 that evening?

24 A. I spoke with him over the telephone, but I did not see
25 him until I arrived at the house.

1 Q. And again, you spoke to him over the phone, and he told
2 you he was at his parents' house, but you have no personal
3 knowledge whether that in fact was true? Is that correct?

4 A. When I spoke to him, he told me that he was at the
5 hospital visiting his godfather with his father. And yes, I
6 did speak to his father, and I do know that he was at the
7 hospital visiting his godfather with his father.

8 Q. He was at the hospital all day?

9 A. During the afternoon.

10 Q. Well you didn't tell us about that during your testimony
11 when Mr. Aguayo was asking you questions.

12 A. I was not asked. Mr. Aguayo, Attorney Aguayo did not ask
13 me what David did. He asked me what I did.

14 Q. He didn't ask you whether you spoke to David and whether
15 you knew where he was? You don't remember that?

16 A. When I -- when I was coming down from Vaca Brava, and
17 that was already as night was falling.

18 Q. Okay. And then David told you that he was at his
19 parents' house; is that correct?

20 A. During the night.

21 Q. And did you talk to his father or his mother at that time
22 as well?

23 A. I don't recall.

24 Q. So you have no personal knowledge of where David was, and
25 all you know is what he told you?

1 A. I know that in the afternoon he was with his dad, because
2 I spoke to him. And at night I spoke to him, and he told me
3 that he was with his dad. In the afternoon I spoke to the
4 dad.

5 Q. Let's try this again. I'm talking to you about the
6 evening, ma'am. Do you understand that? Not when he was in
7 the hospital, but when he told you he was at his parents'
8 house. Do you understand that?

9 A. I understand your question now, but you were mixing the
10 questions up.

11 Q. Okay.

12 A. For me.

13 Q. Let's see if I can manage to ask you this clear question
14 in a way that you can understand.

15 A. Yes.

16 Q. When you spoke to David in the evening when you were on
17 your way home, he told you that he was at his parents' house?

18 A. Correct.

19 Q. My question is very simple. You had no personal
20 knowledge of where he was? All you knew was what he told you?

21 A. Only what he told me.

22 Q. Now, later you told us that your sister went into the
23 bedroom, and that she and David were watching a video?

24 A. A music video.

25 Q. And what time did you and David go to sleep?

1 A. During early morning hours, after 1:00, 2:00 in the
2 morning.

3 Q. So it's your testimony that around 11:50, when the
4 neighbor calls you, you and David had been awake all night?

5 A. We were awake, because we -- he arrived at about 9:00,
6 9:20, 9:30. While he bathed -- we went to the room. He
7 called my sister. My sister came to the room. She showed him
8 the video. He was on the internet, and I was watching a
9 television program.

10 The following day we didn't have to work, so, yes,
11 we did go to bed late.

12 Q. So, again, let me ask you the question. It's your
13 testimony that at 11:50, when the neighbor called, you and
14 David had been up all night?

15 A. When the call came in from the female neighbor, yes, we
16 were awake.

17 Q. Okay. And what time did your sister leave the room?

18 A. I can't pinpoint that.

19 Q. Well, if you use 11:50 as a marker, how long before you
20 got that call?

21 A. The call?

22 Q. How long before you received the call had your sister
23 left the room? Half an hour, an hour?

24 A. It could be 40 minutes, 60 minutes.

25 Q. Okay. So you don't recall?

1 A. No, I can't recall. I can't say precisely.

2 Q. But whether it's 40 minutes or 45 minutes or more, you do
3 know that at some point your sister leaves the room and you
4 and David are left alone in the bedroom with your daughter?

5 A. Yes.

6 Q. And your daughter was sleeping or was she up, too?

7 A. Yes. At that time she was asleep.

8 Q. Okay. And how long did you and David remain in the room
9 alone before you got the call at 11:50?

10 A. I can't say precisely.

11 Q. Now, you remember the time of 11:50 very precisely, but
12 you can't remember for how long you and David had been alone
13 in the room before you got that call?

14 MR. AGUAYO: Objection, Your Honor. She's always
15 stated approximately.

16 THE COURT: Well, approximately 11:50 sharp.

17 MR. AGUAYO: No, but she's saying it's precisely
18 11:50. That's incorrect.

19 THE COURT: Okay. Go ahead. You can ask the
20 question.

21 BY MS. DOMINGUEZ:

22 Q. But you would agree with me that for at least 40 minutes
23 you and David, according to your testimony, you and David were
24 alone in the room with your sleeping daughter?

25 A. We were awake. Our daughter was asleep.

1 Q. But you were alone, other than your sleeping daughter?

2 A. Yes. Yes.

3 Q. And it's your testimony that during that time, from the
4 time your sister leaves until the time you get this call at
5 around 11:50, that David was with you?

6 A. David was with me.

7 Q. And of course we would have to accept your testimony
8 about that, because -- and of course we would have to accept
9 your testimony with respect to the fact that David was with
10 you?

11 A. I am saying the truth. He was with me.

12 Q. That's not my question, ma'am. My question is that we
13 would have to accept your testimony for that?

14 A. Because it is the truth.

15 Q. According to you? Right?

16 A. Not according to me. That is the reality.

17 Q. Now, are there any windows in your bedroom?

18 A. A small one in the bathroom.

19 Q. So in the actual bedroom, there are no windows?

20 A. No.

21 Q. Now, it's your testimony that after you received this
22 phone call, you and your family members and David went
23 outside?

24 A. Yes.

25 Q. Okay. Do you remember what time that was?

1 A. After 12:00.

2 Q. Well, could you tell us how long after 12:00? Five
3 minutes, ten minutes?

4 A. No.

5 Q. And you have testified that at the time that you went out
6 and stood in front of the house, that there were neighbors
7 there?

8 A. Yes.

9 Q. In front, directly in front, and to the side as well?

10 A. Directly in front, to the front left, and the neighbors
11 that were at the party that were at the house nextdoor on the
12 left.

13 Q. And these are neighbors who would have had an opportunity
14 to have seen David who was standing according to your
15 testimony immediately in front of your house? Is that
16 correct?

17 A. The neighbor in front saw him.

18 Q. Well, unfortunately you can't testify for anyone else.

19 A. Okay.

20 Q. So if you could just concentrate on answering my
21 question. My question is whether there were neighbors there
22 that were in a position to see David, who was standing,
23 according to your testimony, immediately in front of your
24 house?

25 A. Yes.

1 Q. Okay. And you said that he had no shirt on and he was
2 wearing some sports shorts?

3 A. Yes.

4 Q. And what color were those shorts?

5 A. It was dark-colored pants. Shorts. I don't remember.

6 Q. Now, were you also aware that one of the guns which was
7 recovered when David and his cousin Christian were arrested on
8 October the 20th, has been ballistically proven to have fired
9 at least 20 shots at the La Tombola massacre?

10 A. I did not know that.

11 Q. And were you also aware that the firearm that David had
12 in his possession the day of the arrest had an obliterated
13 serial number?

14 A. Could you repeat that question for me?

15 Q. Were you aware that the firearm that David had in his
16 possession the day of his arrest had an obliterated serial
17 number?

18 MR. AGUAYO: Objection, Your Honor.

19 THE COURT: Were you aware. That's all.

20 MR. AGUAYO: Well, the obliterated serial number is
21 with Christian, not with David.

22 THE COURT: I see.

23 MR. AGUAYO: So I just want that to be clear. She's
24 putting that obliterated gun in David's hand when it's in
25 Christian's.

1 THE COURT: I understand.

2 BY MS. DOMINGUEZ:

3 Q. Do you know that one of the firearms recovered had an
4 obliterated serial number?

5 A. Yes.

6 Q. Now, let me direct your -- you to the monitor in front of
7 you. Even though you've testified you don't know much about
8 firearms, can you tell that this firearm is cocked?

9 A. No.

10 Q. You can't tell that that firearm is ready to be fired?

11 A. No, I don't know. No, I don't know.

12 Q. Now, David was arrested on October 20th on the gun
13 charge; is that correct?

14 A. Yes.

15 Q. And you also know, ma'am, that on February 23rd, 2011,
16 David was charged in an Indictment?

17 A. I don't know the date, but I do know about that
18 Indictment.

19 Q. But you know it was a couple of years ago? Even though
20 you don't know the exact date?

21 A. Yes.

22 Q. And you were also aware that that Indictment contained a
23 series of charges against David based on the La Tombola
24 incident?

25 A. Yes.

1 Q. The incident that occurred on October the 17th, 2009?
2 When you claim David was with you?

3 A. With me, correct.

4 Q. And you know that on February the 24th, the day after the
5 date of the Indictment, there was an additional appearance?
6 Did you know that? That he had an initial appearance on that
7 Indictment?

8 MR. AGUAYO: Your Honor, perhaps if we don't use
9 legal terms and explain to her.

10 THE COURT: Well, were you aware that on the 20th,
11 was it?

12 MS. DOMINGUEZ: 24th.

13 THE COURT: 24th, he had to come to court, they
14 brought him to court before a judge?

15 THE WITNESS: I know that he had to come before a
16 Judge, but I don't recall the date, because of the time that
17 has gone by.

18 BY MS. DOMINGUEZ:

19 Q. And did you attend that hearing?

20 A. What happens is that there were several hearings, and I
21 don't know if I was present at that one.

22 Q. Well, fair enough. Let me ask you then, generally, you
23 were aware that in connection with that Indictment, there were
24 a series of hearings where David had to appear before a Judge
25 in connection with that Indictment that charged him with

1 incidents regarding La Tombola?

2 A. Yes.

3 Q. And you attended some of those hearings; is that correct?

4 A. I don't recall whether it was those hearings or whether
5 it was the hearings regarding the possession of the firearm,
6 because I don't have someone to care for my daughter, and I
7 had to stay taking care of my daughter.

8 Q. But you would agree with me, ma'am, that since February
9 the 23rd, 2011, or approximately for two years, you have known
10 that David Oquendo Rivas has been under Indictment for charges
11 emanating from the La Tombola incident? Is that correct?

12 A. That he has been appearing at them, yes.

13 Q. And that he's been under Indictment for two years for
14 charges related to La Tombola?

15 A. Yes.

16 Q. And is it not correct, ma'am, that today is the first
17 time that you have ever claimed before any law enforcement
18 officer that David Oquendo Rivas was with you the evening of
19 October the 17th, 2009? Yes or no?

20 A. (Remarks in Spanish.)

21 Q. Yes or no?

22 MR. AGUAYO: Objection, Your Honor.

23 THE WITNESS: I was never asked.

24 THE COURT: Never asked. That was the answer.

25 BY MS. DOMINGUEZ:

1 Q. You were never asked. Are you suggesting to the members
2 of this jury that you were going to wait to be asked whether
3 David was with you on October the 17th, 2009, before you spoke
4 up?

5 A. No.

6 Q. Is that your testimony?

7 A. Since the time of -- since the time of his arrest, I have
8 always told his attorneys that he was innocent. I have never,
9 no member of the prosecution team, no officer, no judge, no
10 one has given me the opportunity for me to say that he was not
11 there.

12 MR. AGUAYO: Excuse me.

13 THE WITNESS: That he was with me.

14 MR. AGUAYO: May we approach the bench on something
15 here?

16 THE COURT: Sure.

17 (Bench conference held.)

18 MR. AGUAYO: Your Honor, those questions have been
19 ingenuous, because in the bail hearing which David had on
20 October 20th, Malave was there. And they did not allow him to
21 testify that David -- that he saw David -- what Malave is
22 going to testify now, that he saw David that night. And he
23 was in front of the house, and she was there. They didn't get
24 into that. But it's in the transcript which I read concerning
25 the October 20th incident.

1 MS. DOMINGUEZ: Judge, I'm going to her intent, her
2 state of mind. It's her credibility at issue. I'll take care
3 of Malave when he testifies.

4 MR. AGUAYO: That's the point. You're making it
5 sound like she didn't come forward.

6 MS. DOMINGUEZ: She didn't.

7 MR. AGUAYO: She was at the hearing.

8 THE COURT: It's matter that goes to credibility,
9 whether she understood at some point in time as a citizen that
10 she had an obligation to come forward and tell them what she
11 knows. Tell the Government or police officer.

12 MR. AGUAYO: But I would also add, Your Honor, if
13 she's speaking with lawyers and lawyers are giving her
14 instructions, then she's following the lawyer's
15 instructions.

16 THE COURT: Absolutely.

17 MR. HEGYI: A lawyer instructing her not to tell the
18 truth and not to come forward?

19 MR. AGUAYO: No. That we're going to use her at this
20 trial.

21 THE COURT: I think this can be explored if it's
22 explored correctly, and I will allow the exploration of
23 this.

24 MR. AGUAYO: All right.

25 (Bench conference concluded.)

1 BY MS. DOMINGUEZ:

2 Q. Now when you testified that no one gave you the
3 opportunity, not a Judge, not the the U.S. Attorney's Office
4 gave you the opportunity to tell them that David was with you,
5 did you try? Did you ever call? Did you pick up the phone?
6 Did you send a letter? Did you do any of that? Did you do
7 any of that?

8 A. No. I simply told the investigator and the attorneys.

9 Q. And what was the name of the investigator that you told?

10 A. Mr. Alvin Aponte.

11 Q. So just to recap here, it is true then, ma'am, that for
12 two years while David Oquendo Rivas has been in jail, you did
13 not ever come forward to tell any law enforcement officer that
14 David was allegedly with you on the evening of October the
15 17th, 2009? Is that true? Yes or no?

16 A. That I never went?

17 Q. Did you not understand the question?

18 A. No, I didn't understand it.

19 Q. Okay. Let me try it again.

20 A. Please.

21 Q. During the last two years that David Oquendo Rivas has
22 been in jail, isn't it correct, ma'am, that you have never
23 contacted any law enforcement officer to tell them that on the
24 evening of October the 17th, 2009, the night of La Tombola,
25 David Oquendo Rivas could not have been at La Tombola because

1 he was allegedly with you?

2 A. Correct.

3 Q. And you didn't do that; is that correct? Before today?

4 Before any law enforcement officer?

5 A. No.

6 Q. But today you're here testifying in the trial of David

7 Oquendo, correct?

8 A. Correct.

9 Q. The father of your daughter?

10 A. Uh-huh. Correct.

11 Q. And your commonlaw husband?

12 A. Correct.

13 Q. And even though he has been in jail for the past two
14 years, you have maintained contact with him?

15 A. Yes.

16 Q. Both by telephone?

17 A. By phone.

18 Q. And also in person? Through visits that you make to him
19 in the jail?

20 A. Yes.

21 Q. And it is your hope, as you testify here today, that soon
22 you will be together again? Is that correct?

23 A. I am simply saying the truth.

24 Q. Let me repeat the question. Is it or is it not your

25 hope, as you're testifying here today, that he will again soon

1 be with you and your daughter?

2 A. Yes.

3 Q. I have no further questions.

4 MR. AGUAYO: Yes, I have some questions, Your Honor.

5 THE COURT: You have much?

6 MR. AGUAYO: Well --

7 THE COURT: I just need to know, because there is a
8 strategic decision to make here regarding lunch.

9 MR. AGUAYO: Well, Your Honor, I'm going to ask the
10 Court, Attorney Chico is looking for it, the Notice of Alibi
11 which we gave months ago, that we gave it to the Government,
12 and that the Government could have gone to interview them
13 but -- we have the date?

14 MS. DOMINGUEZ: Judge, is there a question that's
15 being posed to this witness?

16 MR. AGUAYO: I'm asking for judicial notice.

17 THE COURT: There is -- yes, there is a notice of an
18 alibi. What is the date?

19 MR. AGUAYO: Your Honor, if we can break for lunch,
20 and Chico can find it for me but we'll be asking for judicial
21 notice.

22 THE COURT: How many questions do you have for her?
23 That's the question.

24 MR. AGUAYO: Well, I have basically two.

25 THE COURT: Okay. Why don't you do that first.

REDIRECT EXAMINATION

1
2 BY MR. AGUAYO:

3 Q. Ms. Lopez, when you were interviewed by the investigator,
4 the Government states that the Indictment was on February
5 23rd, 2011, correct? Do you recall that?

6 A. (Shaking head from side to side.) No.

7 Q. All right. Let's assume that the Indictment was on
8 February 23rd as the prosecutor told you.

9 A. Okay.

10 Q. Now, Alvin Aponte, the investigator went to see you,
11 correct?

12 A. Correct.

13 Q. And he took notes of what you told him?

14 A. Yes, he made notes of everything I told him.

15 Q. And you signed that, did you not?

16 A. Correct.

17 Q. And do you know what date you signed that?

18 A. No.

19 Q. If I showed you the document which you signed, would that
20 refresh your memory?

21 A. Yes.

22 MR. AGUAYO: May I, Your Honor?

23 THE WITNESS: Yes, that is my signature. And that is
24 the date.

25 BY MR. AGUAYO:

1 Q. All right. And what date is that?

2 A. March 24, 2011.

3 Q. And that's one month after the Indictment?

4 A. Correct.

5 Q. So from one month after the Indictment, you've already
6 said that David was with you?

7 A. Correct.

8 Q. And you knew that you eventually when we had this trial
9 would be a defense witness, you would testify at this trial?

10 MS. DOMINGUEZ: Judge, these are all leading
11 questions.

12 THE COURT: I will allow that.

13 THE WITNESS: Correct.

14 MR. AGUAYO: Your Honor, I would -- I have the copy
15 of the Notice of Alibi, so I can request judicial notice.

16 THE COURT: What is the date?

17 MR. AGUAYO: Judicial notice for on September 28 --
18 I'm sorry, November -- September 12, 2012 was the Notice of
19 Alibi. It's docket number 505.

20 THE COURT: Very well.

21 BY MR. AGUAYO:

22 Q. Now, since -- and in this document, this Notice of Alibi,
23 is your name and your address?

24 MS. DOMINGUEZ: Judge, lack of foundation that this
25 witness has even seen this document.

1 THE COURT: She did not prepare that.

2 MR. AGUAYO: All right.

3 THE COURT: The document is in evidence --

4 MR. AGUAYO: All right. Then I have just one more
5 question.

6 BY MR. AGUAYO:

7 Q. Since September 12, 2012, has the Government or any
8 government agent bothered to go see you and ask you about the
9 alibi defense?

10 A. No one ever asked me, nor did anyone go to see me.

11 MR. AGUAYO: No further questions, Your Honor.

12 THE COURT: Thank you. Anything else?

13 MS. DOMINGUEZ: No, Judge.

14 THE COURT: Thank you very much. You are now
15 excused.

16 (At 12:18 PM, witness excused.)

17 THE COURT: Lunch recess. We will be back hopefully
18 at 1:30.

19 THE WITNESS: Thank you.

20 COURT SECURITY OFFICER: All rise.

21 (At 12:18 PM, jury left the courtroom.)

22 (At 12:18 PM, recess taken.)

23 (At 1:46 PM, proceedings reconvened.)

24 MR. AGUAYO: Your Honor, may we approach?

25 THE COURT: Of course.

1 (Bench conference held.)

2 MR. AGUAYO: A couple things, Your Honor.

3 THE COURT: Can I see the Notice of Alibi?

4 MR. AGUAYO: Yes. Your Honor, I would like to put
5 this in as an exhibit, as judicial notice under 201.

6 MS. DOMINGUEZ: We would object, Judge. We would
7 object, because the cross-examination was directed at the
8 witness's actions, not the attorney's actions.

9 THE COURT: What I can do is I can give an
10 instruction about the fact that the Rules require notice of
11 alibi, and notice of alibi was given. I don't know how many
12 of these are going to testify.

13 MR. AGUAYO: They're all going to testify.

14 THE COURT: Well, if all testify, I will say you gave
15 notice to them on such and such a date. That's all.

16 MR. HEGYI: Your Honor, I would ask that you include
17 the precise language, the exact language that was provided,
18 which is that the person was in the home until the following
19 morning. Was in the home. We'd ask that that language be
20 included.

21 THE COURT: Can I see this copy?

22 MR. AGUAYO: Of course.

23 THE COURT: Okay. Let's cross that bridge when we
24 get there. If I think that you are entitled to, how do you
25 call it -- you gave notice of alibi without a doubt, and that

1 is something that has to be put in context somehow. Okay.

2 MR. AGUAYO: Your Honor, the other thing is, as you
3 know, the -- well you don't know. We subpoenaed the
4 newspapers, because Jannette Maysonet said, and it came out
5 with the agent's testimony, that she said that she recognized
6 Oquendo in the newspapers, a picture of him in the newspaper
7 after his arrest.

8 Now, we Subpoenaed El Nuevo Dia, and I asked her,
9 those days, the newspapers that were out was El Nuevo Dia,
10 Primera Hora, and El Vocero. She said yes. We Subpoenaed El
11 Nuevo Dia, and Primera Hora. And David's picture is not
12 there. And that's fine. We can stipulate to that if they
13 want. However, the El Vocero which we asked them to give us,
14 the thing is they filed a motion with the Court.

15 THE COURT: Yes. I saw the motion, and I understood
16 from the motion that there was going to be agreement.

17 MR. AGUAYO: Yes, there was. There was.

18 THE COURT: Okay.

19 MR. AGUAYO: So what happened was last night when we
20 arrived at the office, I'll tell you what happened here. The
21 file with the newspapers, every page is on a separate PDF
22 file. Someone has been through and through them, but we're
23 missing January 2011. I spoke to the attorney for Vocero. He
24 says they have problems with that month. He just texted me
25 that they don't have it.

1 MR. AGUAYO: Because I was going to ask the Court to
2 call Vocero.

3 THE COURT: I cannot call Vocero.

4 MR. AGUAYO: I just found out.

5 Maria, please, I don't --

6 THE COURT: (Remarks in Spanish.) What -- the CD
7 doesn't have it. El Vocero doesn't have it. They lost tons
8 of documents they say.

9 MR. AGUAYO: So what I'm going to do --

10 THE COURT: You have copies of the articles?

11 MR. AGUAYO: Yes, we have copies of the articles on
12 the disc.

13 THE COURT: You collected them?

14 MR. HEGYI: Not the ones that are lost.

15 MR. CHICO: The ones that are lost, we have to go to
16 the library for them.

17 THE COURT: That's the only thing you can do.

18 MR. AGUAYO: My question is, I was hoping to finish
19 today, with that person saying I reviewed all these articles
20 and that picture's not there. If they have to go to the
21 library, to the archives to look for January, then I can't
22 finish today. That's the problem I have.

23 We didn't realize that they wouldn't have January --
24 they've been looking at them all night and this morning.

25 THE COURT: Why don't we cross that bridge when we

1 get there, because if all that remains at the end of the day
2 from both sides is that little thing, we can take care of it
3 later.

4 MR. AGUAYO: Okay. All right.

5 THE COURT: Because I have to work on the charge. We
6 have to meet on the charge. We can always, you know, ask you
7 not to rest until you get that this week, figure it out.

8 MR. AGUAYO: Okay. Fine.

9 THE COURT: Let's wait to see where we can reach.

10 MR. AGUAYO: And now what we're going to do, Your
11 Honor, is Mr. Ruhnke's going to interrupt mine in order to put
12 on his.

13 MR. RUHNKE: It will take ten minutes.

14 MR. AGUAYO: And then we'll come back and do mine.

15 THE COURT: No problem. I told you this morning you
16 can do that.

17 MR. AGUAYO: Oh, I didn't hear Your Honor.

18 (Bench conference concluded.)

19 COURT SECURITY OFFICER: All rise.

20 (At 1:51 PM, jury entered courtroom.)

21 THE COURT: So, Mr. Ruhnke, you're going to call
22 somebody now.

23 MR. RUHNKE: Yes, Your Honor.

24 THE COURT: Yes.

25 MR. RUHNKE: I call Task Force Agent Cristobal

1 Rodriguez.

2 COURTROOM DEPUTY: Raise your right hand.

3 Do you solemnly swear that the testimony you are
4 about to give in this case is the truth, the whole truth, and
5 nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE COURT: Very well.

8 MR. RUHNKE: Thank you.

9 TASK FORCE AGENT CRISTOBAL RODRIGUEZ,
10 called as a witness by Defendant Candelario Santana,
11 having been sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. RUHNKE:

14 Q. Good afternoon, sir.

15 A. Good afternoon.

16 Q. Sir, you are an agent of law enforcement?

17 A. Yes.

18 Q. What agency are you employed by?

19 A. Correctional department.

20 Q. And are you assigned to a task force, Federal task force?

21 A. Yes, sir.

22 Q. And in that capacity, did you work on the investigation
23 of La Tombola?

24 A. I was there.

25 Q. Okay. And did you interview witnesses in regard to the

1 La Tombola investigation?

2 A. Yes.

3 Q. In particular, did you interview a witness named Amarilys
4 Fonseca Matias?

5 A. Yes.

6 Q. And after that interview, were you responsible for
7 preparing an FBI 302 report?

8 A. Yes.

9 Q. I'm handing you a document marked Defendant's Exhibit 12.
10 Is that the 302 report that you prepared?

11 A. A copy, yes.

12 Q. And feel free to refer to it if you have to refresh your
13 recollection, sir.

14 Okay. All right. That interview took place on
15 November 9, 2009; is that correct?

16 A. Yes.

17 Q. And during the interview, Ms. Fonseca Matias described to
18 you and another agent what occurred inside La Tombola on
19 October 17, 2009, correct?

20 A. Yes.

21 Q. All right. And one of the things she told you was that
22 at some point during a lull in the shooting, she heard a voice
23 that said in sum and substance, nobody gets out of here alive;
24 is that correct?

25 A. Yes.

1 Q. And she also testified -- also told you that she had seen
2 some of the articles of clothing of the shooter; is that
3 correct?

4 A. Yes.

5 Q. And did she tell you that she could not identify the
6 people who were doing the shooting, nor could she identify the
7 voice of the man she heard?

8 A. Yes.

9 Q. No further questions.

10 THE COURT: Any cross?

11 MS. DOMINGUEZ: None.

12 THE COURT: Thank you. You are now excused.

13 THE WITNESS: Thank you.

14 (At 1:56 PM, witness excused.)

15 THE COURT: Mr. Ruhnke, any additional evidence?

16 Mr. Ruhnke, anything else?

17 MR. RUHNKE: Yes. I call Task Force Agent Antonio
18 Nunez.

19 COURTROOM DEPUTY: Raise your right hand.

20 Do you solemnly swear that the testimony you are
21 about to give in the case now before the Court is the truth,
22 the whole truth, and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 TASK FORCE AGENT ANTONIO NUNEZ,
25 called as a witness by Defendant Candelario Santana,

1 having been sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. RUHNKE:

4 Q. Sir, good afternoon.

5 A. Good afternoon.

6 Q. Are you a law enforcement agent?

7 A. Yes, sir.

8 Q. And what agency do you work for?

9 A. I work for the Police of Puerto Rico, but I'm assigned to
10 the FBI task force.

11 Q. And did you work on the investigation of the murders and
12 injuries at La Tombola?

13 A. That's correct.

14 Q. And did you on two occasions participate in interviews of
15 a witness named Jose Perez?

16 A. Correct.

17 Q. I'm handing you documents marked Defendant's Exhibit 15
18 and 14. Are those the reports of those two interviews?

19 A. That's correct.

20 Q. And am I correct that Mr. Perez was interviewed for the
21 first time on February 2, 2011, and the second time February
22 15, 2011? If you look at your 302s?

23 A. The first one was on February 2nd of 2011.

24 Q. And the second one was on?

25 A. And the second one, February 15, 2011.

1 Q. Okay. All right. And during those two interviews, was
2 Mr. Perez shown photographs?

3 A. Correct.

4 Q. During the first interview, he was only shown one
5 photograph; is that correct?

6 A. That's right.

7 Q. And is that the photograph that I'm putting on the screen
8 in evidence as Government's Exhibit 165? Let me see if I can
9 get this going. Thank you.

10 A. Correct.

11 Q. That's the photograph he was shown; is that correct?

12 A. Yes, sir.

13 Q. And during the second interview, was he shown that
14 photograph again as well as an older photograph of
15 Mr. Candelario Santana?

16 A. Correct. The one that was first shown to him was the one
17 of him with short hair. And then this one was shown.

18 Q. Over these two interviews, am I correct that the witness
19 only saw two photographs?

20 THE INTERPRETER: In the two interviews? I'm
21 sorry.

22 BY MR. RUHNKE:

23 Q. Two photographs -- I'll withdraw it and restate the
24 question.

25 Am I correct that in the course of these two

1 interviews, the witness was shown a total of two photographs?

2 Correct?

3 A. In the first interview, one photograph was shown. And in
4 the second interview, two photographs were shown.

5 Q. And the two photographs at the second interview included
6 the one photograph that had been shown at the first interview,
7 correct?

8 A. That's right. That's correct.

9 Q. Am I correct that he was never shown a photo spread?

10 A. That's correct. A photo array was never shown. He knew
11 the person.

12 Q. So there was no photo spread shown to him, correct?

13 A. No.

14 Q. Is it correct that no photo spread was shown to him?

15 A. That is correct, it was not.

16 Q. Thank you. I have no further questions.

17 THE COURT: Any question?

18 MS. DOMINGUEZ: Very, very, very brief.

19 THE COURT: Very well.

20 CROSS-EXAMINATION

21 BY MS. DOMINGUEZ:

22 Q. Sir, why is it that you didn't show Mr. Perez Otero a
23 photo lineup?

24 A. Because during the interview, he always stated that he
25 knew the person that he had seen that night. And he called

1 the person by his name.

2 Q. And who did he identify?

3 A. Alexis Candelario. (Witness indicating.)

4 Q. And when the person that is making the identification
5 indicates to you as an agent that he knows the person and can
6 identify the person by name, is it customary that that person
7 does not need to be shown a lineup?

8 A. Correct. A lineup of pictures is not shown to this
9 person, because the person already knows the person.

10 Q. As opposed to someone who is making an identification
11 when he sees the suspect for the first time during the
12 incident?

13 A. That's right. When a person encounters a suspect for the
14 first time, then a lineup of photos is shown to this person.
15 If the suspect is in that lineup, then the person will
16 identify him.

17 Q. And before you showed him the photograph that Mr. Ruhnke
18 displayed to you, where Alexis Candelario is depicted with the
19 braids, did Mr. Perez Otero tell you that it was Alexis
20 Candelario that he had seen that night at La Tombola?

21 A. Correct. He said it -- he said that, and he also said
22 that he was wearing braids, and that he had a beard, and hat.
23 That's why the photo was shown to him, to see if the person
24 was in the same condition as in the picture when the person
25 saw him.

1 Q. And when you showed him the picture, was he again able to
2 positively identify Alexis Candelario?

3 A. He identifies him, and he also says that that night he
4 saw him in that same condition. That is the night of La
5 Tombola.

6 Q. I have nothing further.

7 MR. RUHNKE: Nothing further.

8 THE COURT: Thank you. Anybody else?

9 MR. RUHNKE: I have a stipulation to read, Your
10 Honor.

11 THE COURT: Yes. Please.

12 MR. RUHNKE: It's marked --

13 THE COURT: It's another stipulation. We don't mark
14 it --

15 MR. RUHNKE: It is marked.

16 THE COURT: It is marked. Okay. Exhibit --

17 MR. RUHNKE: It is marked Defendant's Exhibit 16, and
18 I'll read it to the jury if I may, Your Honor.

19 THE COURT: Sure.

20 MR. RUHNKE: Okay. It reads, and I'll zoom in just a
21 bit, the following is hereby stipulated and agreed to by and
22 among the parties to this matter.

23 One, testimony of Noelia Fermin Rijos. If called to
24 testify as a witness, Noelia Fermin Rijos would provide the
25 following evidence. She was interviewed by representatives of

1 the FBI on February 11, 2011, and provided the following
2 information.

3 On the evening of October 17, 2009, she arrived at La
4 Tombola at approximately 10:45 PM. Shortly before the
5 shooting started, she was in the area of the fritters stand
6 when she observed two of the shooters. She only described
7 one, since once the shooting started, she went to the ground
8 and hid under a cabinet.

9 That individual was described as wearing red and
10 black Air Jordan type sneakers, and a red short-sleeved shirt.
11 He was skinny, had tan colored skin, and wore a bandana around
12 the area of his eyes.

13 The subject looked at the witness and shook his head
14 as if to say no. He was wearing a black baseball cap with a
15 New York Yankees logo on it. He was carrying a long, black
16 rifle.

17 The person was someone she had seen in Sector 26
18 driving a Toyota Corola. The witness was shown photo spreads,
19 each of which contained six photographs. One photo spread
20 contained a photograph of David Oquendo Rivas. The other
21 photo spread contained a photograph of Christian Ortiz Rivera.
22 She was unable to identify anyone in either photo spread.

23 And now actually it should read two, testimony of
24 Felix Rivera Rivera. If called to testify as a witness, Felix
25 Rivera Rivera would provide the following evidence: He was

1 interviewed by represents of the Bayamon District Attorney on
2 October 19, 2009.

3 He was in and out of La Tombola on the evening of
4 October 17, 2009, and at one point had gone home to bathe. At
5 around 11:30 he observed three men get out of a black car.
6 The driver was carrying a rifle that looked like an AH 15.
7 The front seat passenger was carrying a short weapon with an
8 extended clip. The rear passenger had a rifle.

9 The driver was dark skinned, five feet ten inches
10 tall, with a bandana wrapped around his nose and eye area like
11 the motorcyclists wear, with the point of the triangle
12 pointing down. He was wearing a black cap, a black shirt, and
13 had on long, dark-colored jeans that were old.

14 The front seat passenger was white, short, wearing a
15 dark hat and a light-colored shirt. The rear seat passenger
16 was possibly wearing a red shirt and an old hat.

17 And it's signed and executed by all the parties. And
18 I offer this into evidence, Your Honor.

19 MR. HEGYI: No objection.

20 MR. RUHNKE: And that completes my presentation, Your
21 Honor.

22 THE COURT: No more evidence? You're resting.

23 MR. RUHNKE: We believe we rest. I can't imagine
24 what else we'd be doing.

25 THE COURT: Okay. Very well.

1 MR. RUHNKE: Thank you.

2 THE COURT: Mr. Aguayo.

3 MR. AGUAYO: Yes, Your Honor. The defense calls
4 Angela Urquia Ortiz.

5 COURTROOM DEPUTY: Raise your right hand.

6 Do you solemnly swear that the testimony you are
7 about to give in this case is the truth, the whole truth, and
8 nothing but the truth, so help you God?

9 THE WITNESS: Yes, I do.

10 MR. AGUAYO: May I begin, Your Honor?

11 A N G E L A V I V I A N A U R Q U I A,
12 called as a witness by Defendant Oquendo Rivas, having
13 been sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. AGUAYO:

16 Q. Madam, what is your name?

17 A. Angela Viviana Urquia Feliz, with a z on the end.

18 Q. Pardon the question, but what's your age?

19 A. 47 years old.

20 Q. Madam, how far did you go in school?

21 A. I have an Associate Degree in secretarial sciences.

22 Q. Madam, are you employed?

23 A. Yes.

24 Q. Where are you employed?

25 A. In the Consuega Jewelry Store in Old San Juan.

1 Q. And how long have you worked there, ma'am?

2 A. Seven to eight years approximately.

3 Q. And what do you do there, ma'am?

4 A. I'm a saleswoman.

5 Q. Were you working on October 17, 2009?

6 A. Yes.

7 Q. Madam, what is your marital status?

8 A. Divorced.

9 Q. For how long, madam?

10 A. Approximately 14 years.

11 Q. All right. Do you have any children, madam?

12 A. Yes.

13 Q. Would you please name them?

14 A. Johanna Marie Lopez Urquia, Clayivinet Lopez Urquia, and
15 Jose Luis Lopez Urquia.

16 Q. Madam, where do you reside?

17 A. I live in the Las Gaviotas subdivision, Paloma Street
18 E-13, Toa Baja, Puerto Rico.

19 Q. How long have you resided there, ma'am?

20 A. From 20 to 21 years.

21 Q. And who owns that residence?

22 A. Jose Luis Lopez Guadarama (ph) and Angela Viviana Lopez
23 Urquia.

24 Q. Would Jose Lopez Guadarama, would that be your
25 ex-husband?

1 A. Yes.

2 Q. All right. Now, before October 17, 2009, who lived in
3 that residence?

4 A. Angela, me, Johanna Marie Lopez Urquia, Clayivinet Lopez
5 Urquia, Jose Luis Lopez Urquia, David Oquendo, and Jovianette
6 Oquendo.

7 Q. What is the name?

8 A. Joviannette.

9 Q. And who is she?

10 A. My granddaughter.

11 Q. And that is the daughter of Johanna and David?

12 A. Yes.

13 Q. Okay. Now, aside from Mr. Oquendo living in your house,
14 did he live somewhere else, also? Did he spend the nights in
15 some other place?

16 A. Yes.

17 Q. Where?

18 A. At his parents' home.

19 Q. In terms of staying at your house in relation to staying
20 at his parents' house, where would he stay more?

21 A. At my home.

22 Q. And for how long had he been living there approximately?

23 A. Since Johanna got pregnant.

24 Q. So that would be what, eight months, a year? More or
25 less how long?

1 A. About a year approximately.

2 Q. All right. Now, drawing your attention to October 17,
3 2009, do you remember that day?

4 A. Yes.

5 Q. And were you working that day?

6 A. Yes.

7 Q. What time did you leave for work?

8 A. 8:00, 8:30 in the morning.

9 Q. And where did you go to work?

10 A. I went to the Consuega Jewelry Store in Old San Juan.

11 Q. And what time did you finish work?

12 A. 5:20, 5:30.

13 Q. And after you left your work, where did you go?

14 A. I went to buy food.

15 Q. All right. And after that what happened?

16 A. I returned to my home.

17 Q. When you arrived to your home, who, if anyone, was there?

18 A. Jose Lopez Urquia, my son. He was sleeping.

19 Q. Where was Johanna, Clayivinet, and the baby?

20 A. They had gone to eat at Vaca Brava.

21 Q. All right. Did you ever see Johanna, Clayivinet, and the
22 baby arrive at the house?

23 A. Yes.

24 Q. Approximately what time did they arrive at the house?

25 A. 8:00, 8:30, more or less.

1 Q. All right. And who, if anyone else, arrived at your
2 house that night?

3 A. David Oquendo.

4 Q. By the way, do you see David Oquendo here in the
5 courtroom?

6 A. Yes.

7 Q. Can you identify him, please, for the record?

8 THE COURT: No need.

9 MR. AGUAYO: All right. No problem.

10 THE WITNESS: Okay.

11 BY MR. AGUAYO:

12 Q. Approximately what time did you see David arrive at your
13 house?

14 A. 9:00, 9:30.

15 Q. All right. Do you know how -- if you know, do you know
16 how David arrived at your house?

17 A. In the SUV that he had at that time.

18 Q. All right. And, all right, so David arrives. What do
19 you recall happened once he arrived?

20 A. He said hello to those of us that were in the house. And
21 then he went inside his bedroom and Johanna's bedroom.

22 Q. Okay. And when, if ever, did you see him again that
23 night?

24 A. He went from the bedroom, to the bathroom, to shower.

25 Q. And after he showered, what did he do, if you recall?

1 A. He returned to his room again.

2 Q. All right. And where did you go, madam?

3 A. My bedroom.

4 Q. Okay. Approximately 11:50 PM, close to midnight, what if
5 anything occurred that you remember?

6 MS. DOMINGUEZ: I'm sorry, Judge. Would it be 11:15
7 or 11:50?

8 MR. AGUAYO: 11:50.

9 MS. DOMINGUEZ: I think the translation was 11:15.

10 THE INTERPRETER: Interpreter stands corrected.
11 (Remarks in Spanish.)

12 BY MR. AGUAYO:

13 Q. Do you recall any -- did you hear anything?

14 A. Yes.

15 Q. What did you hear, ma'am?

16 A. A lot of shots.

17 Q. Did you hear them close or did you hear them at a
18 distance?

19 A. Close.

20 Q. Okay. And what did you do once you heard those shots?

21 A. Well, when everything became calm, I went out into the
22 hallway and then to the carport. But in the hallway I
23 encountered Johanna and David. And Johanna gave the baby to
24 Clayita, and then we went out to the carport.

25 Q. How much time, ma'am, expired from the time you heard the

1 | shots to the time you came out to the hallway?

2 | A. Seconds.

3 | Q. Okay. So you come out to the hallway, and you see them,
4 | and what happens?

5 | A. We went over to the carport.

6 | Q. Okay. And what did you do there?

7 | A. We were -- we were commenting on what had happened. We
8 | didn't know what it was.

9 | Q. And you're outside the house when -- you said the
10 | carport?

11 | A. Still in the carport, not outside yet.

12 | Q. Okay. And what happened?

13 | A. Nothing. We just -- we were talking there until
14 | everything passed. And there was a party in the house next to
15 | us.

16 | Q. Okay. So you're talking, talking. What happens after
17 | that?

18 | A. A while passed, and then the man that does the rounds,
19 | the security guard of the subdivision came by.

20 | Q. I'm sorry. Do you know his name?

21 | A. Malave.

22 | Q. Is it Luis Malave, ma'am?

23 | A. Yes.

24 | Q. And you stated -- what was his job?

25 | A. He's the subdivision security guard.

1 Q. And how long have you known Luis Malave as a security
2 guard?

3 A. A year or two.

4 Q. Is he related in any way to you?

5 A. No.

6 Q. Do you know if he's related in any way to David?

7 A. No.

8 Q. You don't know or he is not?

9 A. No, I don't know, but I don't think he is related.

10 Q. All right. Now, when Malave arrived, how did he arrive?
11 Was he walking or was he driving?

12 A. He was driving.

13 Q. All right. And did he pass your house?

14 A. Yes.

15 Q. When he passed by your house, where were you located?

16 A. In the entrance of the carport. In the carport.

17 Q. And where was David and Johanna?

18 A. Next to me also in the carport.

19 Q. All right. And when Mr. Malave passed by your house,
20 what did he do, if anything?

21 A. He stood still.

22 Q. And what happened? What did you see?

23 A. David and Jose came out to talk to him.

24 Q. Okay. And do you know what they talked about?

25 A. All I heard was that Malave told them that the entrance

1 and exit gate had been closed so that no one in the
2 subdivision would come in or go out.

3 MS. DOMINGUEZ: Objection, hearsay.

4 THE COURT: Sustained. Sustained.

5 BY MR. AGUAYO:

6 Q. To your knowledge, how long was Malave talking with
7 David? More or less? I'm sorry.

8 A. A while.

9 Q. Okay. And what happened, if you saw? What did Malave do
10 after speaking with David?

11 A. No, because I went in. When I saw that everything was
12 calm, I went back into my bedroom.

13 Q. Okay. Now, and forgive me, what did you do in the
14 bedroom? Did you see David again or what did you do?

15 A. I went in and I went to bed. Everyone was in the house.

16 Q. Okay. Now, Dona Angela, Johanna is your child, correct?

17 A. Yes.

18 Q. And she's married to David Oquendo Rivas, correct?

19 A. Yes.

20 Q. And the small child, Jovianette Oquendo Lopez is your
21 grandchild?

22 A. Yes.

23 Q. And you love all of them?

24 A. Yes.

25 Q. My question is, that even though you love them, would you

1 lie for David Oquendo concerning these events?

2 A. No. Not for David and not for anyone else.

3 Q. All right.

4 MR. AGUAYO: No further questions, Your Honor.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MR. HEGYI:

8 Q. Good afternoon, ma'am.

9 A. Good afternoon.

10 Q. Do you know David's cousin Christian Ortiz Rivera?

11 A. I saw him once.

12 Q. Have you heard David talking about him?

13 A. Yes, occasionally.

14 Q. They're close?

15 A. I didn't see him frequently. I don't know. I only saw
16 him once.

17 Q. You don't know one way or another from your conversations
18 with David?

19 A. No.

20 Q. Okay. Your daughter, are you close with her?

21 A. Yes.

22 Q. Do you talk about virtually everything or do you keep
23 secrets from one another, you and your daughter?

24 A. Well, I understand that she has her privacy, that she's
25 not going to tell me.

1 Q. Okay. Did your daughter share with you that about two
2 weeks or so before the La Tombola massacre, she had seen David
3 Oquendo Rivas with a semi-automatic firearm in his SUV?

4 MR. AGUAYO: Objection, Your Honor. She never
5 testified to a semi-automatic. As a matter of fact, she said
6 --

7 THE COURT: Well let's change the question to
8 pistol.

9 MR. HEGYI: Okay.

10 BY MR. HEGYI:

11 Q. Did she ever share with you that approximately two to
12 three weeks before the La Tombola massacre, she had seen David
13 Oquendo Rivas with a pistol inside of his SUV?

14 A. No.

15 Q. Did you learn the day that David and his cousin Christian
16 were arrested with the three pistols on October 20th, 2009,
17 two to three days after La Tombola massacre? Did you learn
18 about it that day or was it sometime after that?

19 A. I learned about it the day of the arrest.

20 Q. Okay. And did you learn that David had taken ownership
21 for the three guns that he and Christian together admitted
22 ownership of those three guns that they were arrested with?

23 MR. AGUAYO: Objection, Your Honor, as to ownership.
24 They didn't say they owned them.

25 THE COURT: Well, I will allow the question. Go

1 ahead.

2 THE WITNESS: I learned about it through the news.

3 BY MR. HEGYI:

4 Q. Okay. Did you have any conversations with David?

5 A. When?

6 Q. After he was arrested?

7 A. No. Well, when I visited him in jail.

8 Q. Okay. Did you ever talk to him about those guns?

9 A. No.

10 Q. Did you ever talk to him about the La Tombola massacre?

11 A. No.

12 Q. Now, did you ever talk to your daughter about those three
13 guns?

14 A. No.

15 Q. Ma'am, when you got home from work, and then going to do
16 shopping, grocery shopping, you say that you got home I think
17 you said at about 8:00 or 8:30 that night; is that right?

18 A. No.

19 Q. What time did you get home?

20 A. 7:00, 7:30.

21 Q. Okay. I'm sorry. Then did you see -- you're right. I
22 beg your pardon. I wrote it down wrong.

23 You saw your daughter and your -- well, I guess your
24 two daughters and the baby get back at about 8:00, 8:30 that
25 night?

1 A. That's correct.

2 Q. Any were you looking at your watch or are you just trying
3 to think back about the approximate time you recall them
4 getting back?

5 A. I checked the clock more or less.

6 Q. Okay. And was there any reason why on a given day, when
7 you were going to work and coming home, that all these years
8 later you would remember what time people came home? I mean
9 was there a particular reason you were looking at the clock
10 and trying to remember?

11 A. Yes. Because I was attentive to the fact that they were
12 not home. And I am always calling them up.

13 Q. Okay. And did you in fact call them up that night?

14 A. Yes, sir.

15 Q. And then you mentioned that David -- you know, that --
16 now your family is home, right? 8:00 or 8:30 your family is
17 home, correct?

18 A. Yes.

19 Q. Then you felt better because your family's home, right?

20 A. Yes.

21 Q. But then you ended up telling us that about nine o'clock
22 or 9:30 that David came to your house?

23 A. That's correct.

24 Q. Had you called David between the time you got home and
25 the time David came home?

1 A. No.

2 Q. Did you have any specific reason back then on October 17
3 to be trying to remember the exact time that David came home?
4 Was there any reason at all for you to try to remember the
5 exact time?

6 MR. AGUAYO: Objection, Your Honor. She has not
7 given an exact time. She gave an approximation.

8 THE COURT: Objection overruled.

9 THE WITNESS: Can you repeat the question, please?

10 BY MR. HEGYI:

11 Q. Sure. Did you, back on October 17 of 2009, did you have
12 any reason to try to remember the exact time that David
13 Oquendo Rivas got to your house that night?

14 A. It's because a short time had passed after the girls had
15 arrived from dinner.

16 Q. Okay. So this is just an estimate? It's that he arrived
17 sometime shortly after, and this is your guess; is that right?

18 A. Yes, more or less.

19 Q. Okay. So this is the best guess that you can come up
20 with these years later, right?

21 A. Yes.

22 Q. Now, did I understand you to say that once David got
23 there, that he ended up at one point going into the bathroom
24 to take a shower or a bath?

25 A. Correct.

1 Q. And then you went to your bedroom; is that right?

2 A. That's correct.

3 Q. And I take it that you went to sleep?

4 A. No.

5 Q. Were you wide awake the entire night before you heard the
6 gunshots? Were you awake the entire time?

7 A. Yes.

8 Q. Okay. What were you doing?

9 A. In bed.

10 Q. Okay. What were you doing?

11 A. Waiting for my other daughter, because her boyfriend was
12 there. And I was waiting for her to go to the bedroom so that
13 I could go to sleep.

14 Q. Okay. Which other daughter is that?

15 A. Clayita.

16 Q. So let me -- hang on a second.

17 A. Clayivinet.

18 Q. Okay. So Clayivinet was not home?

19 A. Yes.

20 Q. And what time did -- as best you remember, I know we're
21 going just rough guess these years later, but about what time
22 did Clayivinet -- is it Clayivinet Lopez Urquia? Is that
23 correct?

24 THE INTERPRETER: U.

25 MR. HEGYI: U-r-q-u-i-a.

1 THE WITNESS: That's correct.

2 MR. AGUAYO: If I may, Your Honor, I think he asked
3 her, so Clayivinet was not home, and she answered yes. Yes,
4 she was home.

5 THE COURT: I think you should let him do his
6 cross-examination.

7 MR. AGUAYO: I'm sorry, Your Honor. Thank you.

8 BY MR. HEGYI:

9 Q. All right. Let me clear that up, though. I thought you
10 told us that you were staying up because you were waiting for
11 her to get home. Did I misunderstand that?

12 A. No. She was in the house.

13 Q. Okay. So with everybody in the house now, why were you
14 saying you were staying up? I must have misunderstood what
15 you were saying.

16 A. Because she was in the bedroom with her boyfriend, and I
17 didn't want to go to bed until she came to bed with me.

18 Q. I see. And did she ever come to bed with you?

19 A. Yes, after everything passed.

20 Q. Okay. So was that then later in the morning of October
21 18 after you went outside and came back in?

22 A. Can you please repeat the question?

23 Q. Okay. When you say that she did come to bed with you but
24 it wasn't until everything was over, is what you're saying
25 that she was there and she didn't come to bed with you until

1 the next morning sometime?

2 A. Correct.

3 Q. And what is her boyfriend's name, please?

4 A. Concepcion Guzman Perez.

5 Q. And was he there in your home then at the time when you
6 say you heard the shots being fired?

7 A. Yes.

8 Q. And your daughter Johanna would have known that, right?

9 A. Yes.

10 Q. Now, when was it that, and I'd like you to be as specific
11 as you can, you heard a series of gunshots, correct?

12 A. Correct.

13 Q. And from where you were, did it appear to you that they
14 were coming from the general direction of where Sabana Seca,
15 the La Tombola would be?

16 A. I didn't know until a short while ago where La Tombola
17 was. I've never been there.

18 Q. Okay. Did the shots seem to you to be close or far away?

19 A. Close.

20 Q. Were there few or many shots that you heard?

21 A. Many.

22 Q. Now, once that happened, you say you got up and you went
23 into the hallway. And I'd like for you to -- is that correct?
24 You got up and went into the hallway?

25 A. That's correct.

1 Q. And then you said you and your daughter Johanna and David
2 ended up going into I think you said your carport or your
3 garage?

4 A. And Jose.

5 Q. Okay. And then you ended up going from the garage out to
6 the outside of your home? Do you recall that?

7 A. I didn't.

8 Q. Okay. You never went outside your home?

9 A. Up to the gate only.

10 Q. Okay. Now, when you say the gate, do you mean a gate
11 inside the front door or do you mean the gate out near the
12 street?

13 A. The carport gate. It leads to the street.

14 Q. Okay. What I want to understand is did you step outside
15 of your -- the front door or the side door of your home and go
16 outside where the gate was and where there might be grass?

17 A. No.

18 Q. Okay. So you always stayed inside of the gated area,
19 which would be what, inside the carport area?

20 A. Yes.

21 Q. And did your daughter, Johanna, stay in there with you?

22 A. Yes.

23 Q. And did David stay in there with you?

24 A. At that moment, yes.

25 Q. Okay. Did you see David leave from inside the gated

1 carport area where you and Johanna were?

2 A. He didn't go out until he saw Malave, and then he went
3 out with Jose to see Malave.

4 Q. Okay. I'd like for you to give me your -- take a minute
5 and think about it, but I'd like for you to give me your very
6 best estimate as to how long it was from the time you heard
7 the gunshots until you saw Malave. Until you very first saw
8 Malave. Was it five minutes? Was it ten minutes? Was it 15
9 minutes?

10 A. More than 15 minutes.

11 Q. Okay. How many more? What's your best guess?

12 A. 25 minutes more or less. I don't know.

13 Q. And that's not one of the times that you tried to keep in
14 your mind?

15 A. No.

16 Q. Now, could you describe your house for us, please, ma'am?
17 Is it a one-story house, a two-story house?

18 A. One story.

19 Q. Okay. And I think I know the answer to this, but just to
20 be clear, there's no basement in your house, is there?

21 A. No.

22 Q. How many bedrooms are there?

23 A. Four.

24 Q. How many bathrooms?

25 A. Two.

1 Q. And how close is your bedroom to your daughter Johanna's
2 bedroom?

3 A. A minute or less.

4 Q. No, I'm sorry. Are they adjoining? Are they down the
5 hall? Are they the other end of the house? Where is your
6 bedroom in relation to Johanna's bedroom?

7 A. The distance? 20 feet?

8 Q. Okay. They're not right next to each other, right?

9 A. No.

10 Q. Now, you and your daughter Johanna have talked about this
11 case a lot, haven't you?

12 A. No.

13 Q. You've never talked about it at all?

14 A. We have talked, but we don't go into detail.

15 Q. Okay. Let me see if I understand what you're saying.

16 This is the -- this is a very important event for your
17 daughter, isn't it? This trial?

18 A. Yes.

19 Q. She really doesn't want to see David Oquendo Rivas get
20 convicted, does she?

21 A. No.

22 Q. And yet you and your daughter don't talk about details
23 about this case as close as the two of you are and living in
24 the same home?

25 A. Well, we have talked, but not in detail or anything. We

1 don't touch upon the subject, because she has one way of
2 thinking and I have my own way of thinking.

3 Q. Okay. Has she tried to talk to you and you've said,
4 honey, I don't want to talk to you? Or have you tried to talk
5 to her and she said, mom, don't talk to me?

6 A. No.

7 Q. You just both independently decided we're not really
8 going to talk about the facts of this case, all on your own?

9 A. Yes.

10 Q. The neighbors that you -- I understand you never went
11 outside the gate, but give me the neighbors that you saw.
12 Tell me the names of the neighbors. You've lived there 20
13 years, right, or more?

14 A. Yes.

15 Q. What are the names of the neighbors that you saw that
16 night outside?

17 A. Okay. Okay. I saw the one on the left. That's
18 Augustin.

19 Q. What's Augustin's full name?

20 A. Augustin Diaz. Can I clear something up?

21 Q. Sure.

22 A. The thing is I know Augustin because he's lived there for
23 as long as I have lived there, but many of the neighbors have
24 come and gone. And I come in and out, and I don't have time
25 for that.

1 Q. Fair enough. Understood. Who else did you see out
2 there?

3 A. I saw the nephew of the neighbors in front. I know that
4 his name is Chris, but I don't have any more information.

5 Q. Does he live there, Chris?

6 A. No.

7 Q. Okay. What is the name of the neighbor that lives in
8 front?

9 A. I don't know.

10 Q. Okay. Who else did you see outside?

11 A. Chris.

12 Q. Augustin, Chris, who else?

13 A. And Jose.

14 Q. You've already told us about Jose, right?

15 A. Not my son. The neighbor in front.

16 Q. Okay. So what's the neighbor in front? Jose, what's his
17 full name?

18 A. I don't know.

19 Q. Okay. Who else?

20 A. Aside from Malave?

21 Q. Yes.

22 A. No one else.

23 Q. There was no one else aside from Augustin Diaz, Chris,
24 the nephew of your neighbors, and Jose. And until -- and then
25 ultimately Malave showed up. So the whole time there was just

1 the four people outside?

2 A. There were some guests of Augustin's party, but I didn't
3 know those guests.

4 Q. Okay. And what's the name of the people who were having
5 the party?

6 A. Augustin Diaz.

7 Q. Okay. So it's that neighbor, Augustin Diaz?

8 A. Yes.

9 Q. And were people, were a lot of people coming and going or
10 just a couple of people coming and going to Augustin Diaz'
11 house?

12 A. I don't know.

13 Q. Didn't notice?

14 A. No, I didn't.

15 Q. Did -- have you ever seen David Oquendo Rivas with any
16 kind of a firearm?

17 A. No.

18 Q. Have you ever attended any of the hearings, the Court
19 hearings involving your commonlaw son-in-law David Oquendo
20 Rivas, other than coming today?

21 A. Yes.

22 Q. And you were -- did you attend all of them or just some
23 of them?

24 A. Some.

25 Q. Okay. Am I right, ma'am, that up until today, you have

1 never spoken to any prosecutor, any Judge, any law enforcement
2 officer? You've never taken it upon yourself to go to them
3 and tell them what you're telling this jury today; is that
4 true?

5 A. No.

6 Q. Is that a true statement?

7 A. Yes.

8 MR. HEGYI: Thank you, Your Honor.

9 MR. AGUAYO: Just as regards that last question, Your
10 Honor.

11 REDIRECT EXAMINATION

12 BY MR. AGUAYO:

13 Q. Dona Angela, you were interviewed by a private
14 investigator in this case by the name of Alvin Aponte?

15 A. Yes.

16 Q. Okay. And you gave a statement which you signed,
17 correct?

18 A. Yes.

19 Q. All right. Do you recall that date?

20 A. No.

21 Q. If I were to show you this --

22 MR. AGUAYO: May I, Your Honor?

23 THE WITNESS: Can I put my glasses on?

24 BY MR. AGUAYO:

25 Q. Of course, ma'am. Ma'am, would you look at that and look

1 at the date and see if that's your signature on that document?

2 A. Yes.

3 Q. And what date is that?

4 A. March 24th, 2011.

5 Q. That's one month after the Indictment in this case?

6 A. Yes.

7 MR. AGUAYO: Finally, Your Honor, I would request
8 that the Court take judicial notice that in the notice of
9 alibi defense her name was listed, and this was on September
10 12 of 2012.

11 THE COURT: You're asking me to take notice of what?

12 MR. AGUAYO: Judicial notice that a notice of alibi
13 was presented to the Court, government.

14 THE COURT: I said I was going to instruct the jury
15 as to that.

16 MR. AGUAYO: I understand. But at that time it was
17 only as to Johanna. Now it's as to Angela.

18 THE COURT: As to all of them. All that will
19 testify.

20 MR. AGUAYO: Yes, Your Honor.

21 MR. HEGYI: Your Honor, may I ask one question of
22 this witness?

23 THE COURT: Sure.

24 RECROSS-EXAMINATION

25 BY MR. HEGYI:

1 Q. Ma'am, you understood that your son-in-law was being
2 detained in prison for very serious charges, didn't you?

3 A. Yes.

4 Q. You understood that the person that you went to in order
5 to give that statement was a defense investigator in this?

6 A. Yes.

7 Q. You didn't come to law enforcement or a Judge or a
8 prosecutor or an Assistant U.S. Attorney or an FBI Agent and
9 tell them? You went to his defense investigator and told him,
10 right?

11 A. I didn't go.

12 Q. When he came to you, you talked to him, right?

13 A. Yes.

14 Q. But you never came to a Judge or a prosecutor or an
15 Assistant U.S. Attorney or an FBI Agent or anybody in law
16 enforcement and -- voluntarily went to them and told them, did
17 you?

18 A. I didn't understand why I should.

19 MR. HEGYI: No further questions, Your Honor.

20 MR. AGUAYO: I have just one question, Your Honor.

21 FURTHER EXAMINATION

22 BY MR. AGUAYO:

23 Q. Dona Angela, since September 12, 2012, has any
24 prosecutor, any agent come to your house to ask you about
25 these events?

1 A. No, no one.

2 Q. Have they ever bothered to go there to talk to you?

3 A. No.

4 Q. Thank you. No further questions.

5 THE COURT: Thank you very much. You are now
6 excused.

7 (At 2:57 PM, witness excused.)

8 THE WITNESS: Thank you.

9 MR. AGUAYO: Your Honor? May I, Your Honor, the next
10 one?

11 THE COURT: Yes.

12 MR. AGUAYO: It would be Clayivinet Lopez Matias.

13 COURTROOM DEPUTY: Raise your right hand.

14 Do you solemnly swear that the testimony you are
15 about to give in this case is the truth, the whole truth,
16 and nothing but the truth, so help you God?

17 THE WITNESS: I do.

18 MR. AGUAYO: May I begin, Your Honor?

19 C L A Y I V I N E T L O P E Z,

20 called as a witness by Defendant Oquendo Rivas, having
21 been sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. AGUAYO:

24 Q. Ms. Lopez, what is your name?

25 A. Clayivinet Lopez.

1 Q. What is your age?

2 A. 26 years old.

3 Q. And what is your civil status? Your marital status?

4 A. Married.

5 Q. How long have you been married?

6 A. Two years.

7 Q. Do you have any children?

8 A. No.

9 Q. How far did you go to school?

10 A. I am completing my Master's.

11 Q. All right. Could you tell us where you went to college?

12 A. I did my Bachelor's Degree at the University of Puerto
13 Rico, the Carolina campus.

14 Q. And what did you get your Bachelor's Degree in?

15 A. In finance.

16 Q. And subsequent to finishing that, what did you study?

17 A. I started my Master's Degree at the Interamerican
18 University, the metropolitan campus. And I am completing it
19 at the University of Southern Florida.

20 Q. And where do you live, ma'am?

21 A. In Tampa.

22 Q. Florida?

23 A. Yes.

24 Q. And who do you live with?

25 A. With my husband and my brother.

1 Q. All right. And where do you work, if you work, madam?

2 A. I work in the company with my husband. It is a
3 consulting company.

4 Q. Is that your husband's company? You're both -- is that
5 the company that belongs to both of you?

6 A. Yes.

7 Q. What type of consulting, ma'am?

8 A. We give consultancy to hospitals when they change from
9 paperwork to computer. We go to the hospitals and we do
10 training for the doctors and the employees.

11 Q. Madam, where were you living on October 17, 2009?

12 A. At E 13 Paloma Street, Las Gaviotas development in Toa
13 Baja.

14 Q. And with whom did you live there?

15 A. With my mother, my sister, my brother, my niece, and my
16 brother-in-law.

17 Q. All right. And the name of your brother-in-law is?

18 A. David Oquendo.

19 Q. Do you see him in this courtroom today?

20 A. Yes.

21 MR. AGUAYO: There's no need to identify? All right.

22 BY MR. AGUAYO:

23 Q. Now, how long was David Oquendo Rivas -- Johanna is your
24 sister, correct?

25 A. Yes.

1 Q. Do you know how long David was Johanna's boyfriend? Not
2 how long they knew each other. How long they were as
3 boyfriend --

4 A. It's been several years.

5 Q. All right. Do you know how long David has been Johanna's
6 husband?

7 A. About five -- about four to five years.

8 Q. Aside from living in your house, do you have any
9 knowledge as to where David also sometimes spent the night?

10 A. At his house with his parents.

11 Q. Okay. Now, I draw your attention to October 16 --
12 October 17th, 2009. Do you remember that day?

13 A. Yes.

14 Q. And during the day, what, if anything, did you do?

15 A. During that day we went to Sprint, at Plaza del Sol, to
16 exchange some cell phones. And after that we moved on to Vaca
17 Brava at Barranquitas.

18 Q. Was Johanna with you?

19 A. Yes.

20 Q. The baby?

21 A. Yes.

22 Q. I'm sorry. And other people?

23 A. Yes. My best friend was also with us, as well as her
24 daughter. And my husband, who at that time was my boyfriend.

25 Q. All right. So you go to Vaca Brava. That's in

1 Barranquitas, correct?

2 A. Yes.

3 Q. Approximately what time did you arrive?

4 A. At about between 3:00 and 4:00 in the afternoon.

5 Q. And approximately what time did you leave?

6 A. We have -- it was already becoming evening. Night was
7 already falling. I don't remember the time.

8 Q. All right. And where did you -- did his -- where did you
9 go, from the restaurant to where?

10 A. To my house.

11 Q. Okay. And approximately what time did you arrive there?

12 A. It was already night time. It was already at night.

13 Q. And when you arrived there, what did you do?

14 A. When we got there, my best friend took her daughter out
15 of the vehicle, the SUV, and she changed the car seat and put
16 it in her vehicle.

17 Q. Okay.

18 A. And we went into the house. My mom was waiting for us at
19 the entrance door. At the front door.

20 Q. And what happened?

21 A. She scolded us.

22 Q. And why is that?

23 A. Because we had gone to Vaca Brava, and we hadn't taken
24 her with us.

25 Q. All right. What happened after that?

1 A. I went into my room.

2 Q. To your knowledge, did anyone else arrive at your house
3 afterwards?

4 A. After that, I know that David arrived at home.

5 Q. How did you know that David arrived at home?

6 A. Because when I was already in my room, I received a phone
7 call for me to go by their room in order to see a music video.

8 Q. Why would David call you on your cell phone if you're in
9 the same residence?

10 A. Because in my house, we do not yell out to each other
11 from room to room, nor do we look for each other. We make our
12 life easier and call on the cell phone.

13 Q. Okay. And so David calls you on your cell phone. What
14 do you do?

15 A. I went to their room.

16 Q. And who was in the room?

17 A. Johanna, Joviannette and David.

18 Q. Joviannette being the baby?

19 A. Yes.

20 Q. And once you go into the room, what happens?

21 A. David showed me the video.

22 Q. What type of video?

23 A. It was a regaton video.

24 Q. Okay. And after you saw the video, what did you do?

25 A. I went back to my room.

1 Q. All right. Approximately 11:50 PM, going toward
2 midnight, what if anything did you hear?

3 A. I heard several noises that could be shots, but it could
4 also have been fire crackers. There were many.

5 Q. And as a result of hearing that, what, if anything, did
6 you do?

7 A. I remained in my room. And Johanna came in to bring me
8 the baby girl.

9 Q. And after that?

10 A. I went out in order to verify, to see what was going on.

11 Q. And who of the family did you see out there?

12 A. I saw Jose, Johanna, and David.

13 Q. And your mom, did you see your mom?

14 A. I don't recall having seen her.

15 Q. Okay. But you did see David, correct?

16 A. Yes. Yes, I did see him.

17 Q. And what did you observe? What did you see? What
18 happened when you went out?

19 A. Nothing. They were outside talking. I went out and I
20 checked, and I went back in. I didn't stay outside very long.

21 Q. Okay. You were not there -- I ask you, did you see Luis
22 Malave come by?

23 A. No. I went in quickly, and I did not go outside of the
24 house. I stayed at the front door.

25 Q. How long did you stay at the front door seeing David in

1 front of you?

2 A. About two to three minutes.

3 Q. Are you sure it was David?

4 A. Yes. I know him well.

5 Q. All right. Clayivinet, Johanna is your sister, yes?

6 A. Yes.

7 Q. And Jovianette is your niece?

8 A. Yes.

9 Q. And David is married to Johanna and is the father of
10 Jovianette, correct?

11 A. Yes.

12 Q. All right. And you care very much and you love your
13 sister and your niece, correct?

14 A. Yes.

15 Q. Okay. Given that the situation of David obviously
16 effects them, would you lie because of that? Would you lie in
17 this court before these ladies and gentlemen of the jury?

18 A. I could not lie, because if I were to lie and say that
19 David was at my house and he really wasn't, I would be
20 endangering my niece, because I would be leaving her in the
21 hands of an assassin, a murderer. And I couldn't do that.

22 Q. And David was at your house that night?

23 A. Yes.

24 MR. AGUAYO: No further questions, Your Honor.

25 THE COURT: Cross.

CROSS-EXAMINATION

1
2 BY MR. HEGYI:

3 Q. Good afternoon, ma'am.

4 A. Good afternoon.

5 Q. You and your sister are close?

6 A. Yes.

7 Q. Always been close?

8 A. Yes.

9 Q. Do you tell each other everything or do you keep secrets
10 from one another?

11 A. Well, we are sisters. We tell each other about -- we
12 talk about our matters with each other. There may be some
13 things that she keeps to herself, as well as there may be some
14 that I keep to myself.

15 Q. Generally speaking, you share everything? Like most
16 sisters do?

17 A. Yes.

18 Q. How about your mom? Are you close with your mom?

19 A. Yes.

20 Q. Do you talk about virtually everything with your mom?

21 A. Yes.

22 Q. Now, did your sister tell you about having seen David
23 Oquendo Rivas with a pistol in his SUV two to three weeks
24 before the La Tombola massacre took place?

25 A. No.

1 Q. To this very day, you've never heard that before? My
2 telling it to you is the first you've ever heard it?

3 A. Yes.

4 Q. Now, do you remember when David Oquendo Rivas was --
5 first of all, how well did you know David?

6 A. We have known each other for several years, but we had
7 never had a close relationship.

8 Q. Okay. Did you ever see, meet, or speak to his cousin,
9 Christian Ortiz Rivera?

10 A. I know several friends of his that are called Christian.
11 I know about -- I know one of them that's Christian, but I
12 don't know if that's his friend.

13 Q. Okay. Do you remember that two to three days after the
14 La Tombola massacre, that David Oquendo Rivas was caught with
15 a cousin named Christian? Maybe you knew him as a friend
16 named Christian. And that they had together the three of
17 them -- excuse me, the two of them had possession of three
18 pistols?

19 A. I know that they caught David several days after the
20 matter about La Tombola, and that they also caught Christian,
21 but I do not know the detail about the pistols.

22 Q. Okay. The Christian that they caught David with, is that
23 one of the Christian's that you knew was either his friend or
24 his relative?

25 A. Yes.

1 Q. And you were aware that David was charged with very
2 serious crimes in this case, right?

3 A. The charges now related to La Tombola?

4 Q. Correct.

5 A. Yes.

6 Q. And you've known about that, that he's been charged with
7 very serious crimes related to La Tombola for several years,
8 right?

9 A. When they were filed, yes.

10 Q. And you've known that those charges have been pending now
11 for several years?

12 A. Yes.

13 Q. Now, let me go back for a minute to the night of October
14 17th, of 2009. Have you and your sister spoken about what
15 happened on October 17, 2009?

16 A. We have discussed what has come out in the news, but to
17 talk directly like that to each other about what happened,
18 what each one of our experiences lived that night was, no, we
19 haven't touched upon that subject.

20 Q. Okay. Have you and your mother spoken about the events
21 of October 17, 2009?

22 A. The same as with Johanna, we have discussed what has come
23 out about it, but what each of our experiences that evening
24 was, no, we haven't touched upon that.

25 Q. Okay. So you and your sister and your mother have never

1 sat down and talked about what your specific recollections
2 were about what happened on September 17, 2009, is that what
3 you're saying?

4 A. Well, what happens is that what we didn't want was for it
5 to be that the experience that was lived by Johanna, by me and
6 by my mommy, for it to be effected by something that I may say
7 or, that is, to have my recollection be effected by Johanna's.

8 Q. Okay. And did you three sit down and have a conversation
9 with each other and say we need to not talk about this,
10 because someday we may be in court and we may be asked about
11 this? So we, the three of us, need to not talk about what our
12 recollections were?

13 Did you have that kind of a conversation with your
14 sister, or your mother?

15 A. At no time did we sit down to talk like that.

16 Q. Okay. You just each independently came up with this
17 thought on your own?

18 A. No, but when the subject would be brought up, we would
19 stop it.

20 Q. Okay. So if you started to try to talk about it and you
21 started to try to tell what you remembered, your sister or
22 your mother would say stop, stop, don't say anything, we
23 shouldn't talk about this?

24 A. Yes.

25 Q. And that happened with some regularity that you would try

1 to talk to them about it and they would say, stop, stop, don't
2 say anything?

3 A. Not with regularity, because the subject was not
4 discussed much.

5 Q. Okay. But it did happen several times?

6 A. Two or three times.

7 Q. Okay. And sometimes it would be you starting to talk
8 about it, and them telling you to be quiet, don't say
9 anything; and sometimes they would start talking about it, and
10 you would be the one that would say stop, don't say anything?

11 A. Yes.

12 Q. Now, you know that your sister goes to see David at the
13 jail, at the prison, right?

14 A. Correct.

15 Q. She goes there regularly and they talk?

16 A. Yes.

17 Q. You know that they talk regularly on the phone as well?

18 A. Yes.

19 Q. And does your sister share with you what they talk about?

20 A. When he says for her to tell me hello.

21 Q. But nothing other than that?

22 A. Or something that may be related to my niece.

23 Q. Okay. But nothing about this case? She will not discuss
24 with you anything that David tells her about this case?

25 A. No.

1 MR. AGUAYO: Objection, Your Honor. That's presuming
2 that he is talking to her about this case.

3 THE COURT: Overruled.

4 BY MR. HEGYI:

5 Q. I didn't hear the answer.

6 A. No.

7 Q. Okay. Now, let's go back to again the night of October
8 17 of 2009. You said that you heard a series of gunshots, and
9 that you thought for a while or a minute or whatever that it
10 might be fire crackers; is that right?

11 A. Yes.

12 Q. And at the time when you heard those gunshots, you were
13 in your own bedroom, correct?

14 A. Yes.

15 Q. And you were in your bedroom, with you was your
16 boyfriend?

17 A. Yes.

18 Q. Now, without getting into things that we don't need to
19 know about, were you awake or asleep in your bedroom at the
20 time?

21 A. I was awake watching television.

22 Q. Okay. Now, you told us about the -- when you had been in
23 your bedroom earlier in the evening, that you got a phone call
24 from David asking you to come down to your sister's, Johanna's
25 bedroom to watch a movie video; is that right?

1 A. Correct.

2 Q. About what time was that that you first got the phone
3 call from David to go to Joanna's bedroom to watch the movie?

4 A. I don't recall the time.

5 Q. Okay. Is your house a big house, a middle size house, a
6 small house? It's got four bedrooms, right?

7 A. Correct.

8 Q. It's got two bathrooms, right?

9 A. It has three.

10 Q. Okay. Three bathrooms.

11 A. Yes.

12 Q. And it's a one story house?

13 A. Yes.

14 Q. Is -- where is Johanna's bedroom in relation to the
15 bedroom that you were in that night?

16 A. My room is inside of the house. And Johanna and David's
17 room is located in the carport of the house. They closed off
18 half of the carport, and that was their bedroom.

19 Q. Okay. So Johanna's bedroom where Johanna and David were
20 was actually in what used to be the carport?

21 A. Yes.

22 Q. And you can get in and out of the carport from outside
23 the house, right?

24 A. Yes.

25 Q. Now, when you -- when you got the call to go to Johanna's

1 | bedroom and you went down there, about how long did you stay
2 | there watching this video?

3 | A. About two to three minutes.

4 | Q. That's all? You didn't stay and watch the video? You
5 | just came and looked at it for a minute and then left?

6 | A. I watched the video, and I went back to my room.

7 | Q. Okay. So it was a very short video?

8 | A. Yes.

9 | Q. And then you went back to the room -- your bedroom where
10 | your boyfriend was?

11 | A. Correct.

12 | Q. About how long after that did you hear the gunshots that
13 | you thought at first might be fireworks?

14 | A. I don't remember how much time elapsed between the videos
15 | and the noise, the sounds.

16 | Q. You don't know whether it was a short time, a long time?

17 | A. No.

18 | Q. Now, once you did hear the gunshots, you said that you
19 | got up and eventually you made it to the area of the carport,
20 | right where David and your sister's bedroom was, right?

21 | A. No.

22 | Q. You didn't? What did you do?

23 | A. I went out to the entrance of the house, not the carport.

24 | Q. Okay. And when you went to the entrance of the house,
25 | not the carport, but the entrance of the house, was your

1 mother there?

2 A. I don't recall having seen her.

3 Q. At all, after the gunshots you don't recall seeing your
4 mom at all?

5 A. I don't recall having seen her.

6 Q. Fair enough. After the -- you heard the gunshots, and
7 you went to the front of the house, not the carport but the
8 front of the house. Is that where you saw your sister and
9 David Oquendo Rivas?

10 A. Yes.

11 Q. And from that point on, the entire time you saw your
12 sister and David Oquendo Rivas, it was in the front of the
13 house, not in the area of the carport where their bedroom was,
14 right?

15 A. Correct.

16 Q. And when you were there at the front of the house, did
17 you have occasion to look outside and see if there was anyone
18 outside at all?

19 A. From where I was standing, you could not see anyone
20 outside.

21 Q. So is it also fair to say that where Johanna was
22 standing, she couldn't see anybody outside at that time
23 either?

24 A. Johanna -- Johanna and I were not standing in the same
25 place so as to have me know what she could see or could not

1 see.

2 Q. But when she was there in the front of the house where
3 you saw her, are you saying she might have had a slightly
4 different view out the door than what the view was you were
5 able to see?

6 A. Yes, because she was outside, and I was inside.

7 Q. Okay. And was David outside the front of the house or
8 inside the front of the house?

9 A. In front of the house.

10 Q. Okay. So he was outside the house?

11 A. In the front of the house, yes.

12 Q. Am I correct that at no time, on that evening, did you
13 yourself see the security officer by the name of Malave?

14 A. I did not see him.

15 Q. Okay. Do you remember what time it was that you first
16 saw David on the evening of October 17 of 2009?

17 A. I don't recall the exact time, but it was about half an
18 hour to one hour after we arrived.

19 Q. Okay. And what was he wearing?

20 A. I don't recall his clothing.

21 Q. Okay. If he was bear chested, would you remember that?

22 A. No.

23 Q. You wouldn't remember one way or the other?

24 A. No.

25 Q. Now, you know that the outcome of this case is very

1 important to your sister, don't you?

2 A. Correct.

3 Q. And in fact, it's actually very important to your whole
4 family, isn't it?

5 A. Correct.

6 Q. Do you know about how long it was after you heard the
7 fire crackers or the shots that you first saw David Oquendo
8 Rivas?

9 A. It was quick, because as soon as the noises happened, my
10 sister took me, my niece and went off quickly.

11 Q. Okay. Knowing that this case is very important to your
12 sister and knowing this case is very important to your family
13 and to you, too, right?

14 A. It is important for my family. It is.

15 Q. And you knew various hearings were taking place over the
16 last several years in court?

17 A. Correct.

18 Q. And did you come to any of those hearings or statuses in
19 court?

20 A. No.

21 Q. Despite not coming, you knew that there were hearings
22 that were taking place?

23 A. Yes.

24 Q. And at some point you were interviewed by an investigator
25 for David Oquendo Rivas, correct?

1 A. Correct.

2 Q. And he even had you write out a statement and sign it,
3 didn't he?

4 A. Correct.

5 Q. But at no time up until today did you ever contact any
6 Judge, any prosecutor, any Assistant U.S. Attorney, any police
7 officer, any FBI Agent, nobody in law enforcement, no judicial
8 officer to tell them what it is that you're coming in here
9 today and saying, did you?

10 A. I did not communicate with any of the foregoing.

11 Q. Okay.

12 MR. HEGYI: I pass the witness, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. AGUAYO:

15 Q. Madam, when the investigator went to see you, a
16 declaration as such was prepared, a written piece of paper as
17 to what you told the investigator, correct?

18 A. Correct.

19 Q. As to what you had seen that night?

20 A. Correct.

21 Q. And you signed it, correct?

22 A. Correct.

23 Q. Do you recall the date? If you don't --

24 A. If I'm not mistaken it was in about 2011.

25 MR. AGUAYO: Your Honor, may I?

1 BY MR. AGUAYO:

2 Q. Would you look at this document and tell me whether this
3 is the declaration and whether you signed it?

4 A. Yes, it is. It has my signature.

5 Q. And what date is that?

6 A. I don't know whether it is March 24th or May 24th, 2011.
7 March 24th.

8 Q. And since September 12, 2012, has any prosecutor or
9 government agent or judicial officer -- well, forget about the
10 judicial officer. Any prosecutor, any government agent, have
11 they ever bothered to go see you as of September 12, 2012?
12 Has anybody even bothered to go talk to you?

13 A. No one called me. No one visited me. No one contacted
14 me.

15 MR. AGUAYO: I have no further questions, Your Honor.

16 THE COURT: Thank you very much.

17 THE WITNESS: May I withdraw?

18 THE COURT: Yes.

19 (At 3:43 PM, witness left the stand.)

20 MR. AGUAYO: I have another short witness, but can we
21 take a short break?

22 THE COURT: We can take a short break, yes.

23 MR. AGUAYO: Five minutes?

24 COURT SECURITY OFFICER: All rise.

25 (At 3:43 PM, jury left the courtroom.)

1 (At 3:43 PM, recess taken.)

2 (At 4:11 PM, proceedings reconvened.)

3 THE COURT: Mr. Aguayo.

4 MR. AGUAYO: Yes, sir. The defense of Mr. Oquendo
5 calls Luis Malave.

6 COURTROOM DEPUTY: Raise your right hand.

7 Do you solemnly swear that the testimony you are
8 about to give in this case is the truth, the whole truth, and
9 nothing but the truth, so help you God?

10 THE WITNESS: Yes.

11 MR. AGUAYO: May I begin, Your Honor?

12 THE COURT: Please.

13 L U I S M A L A V E,

14 called as a witness by Defendant Oquendo Rivas, having
15 been sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. AGUAYO:

18 Q. Sir, what is your name?

19 A. Luis Malave.

20 Q. Sir, what is your age?

21 A. 50.

22 Q. And what is your civil status, your marital status?

23 A. Married.

24 Q. And how long have you been married, sir?

25 A. 18 years.

1 Q. Sir, do you have any children?

2 A. Yes.

3 Q. How many?

4 A. One.

5 Q. Okay. Sir, were you working for anyone on October 17,
6 2009?

7 A. Yes.

8 Q. Who were you working for?

9 A. For the Martinez Enterprises.

10 Q. And what is the Empresas Martinez?

11 A. A security company.

12 Q. And when did you start, sir?

13 A. I don't exactly remember. I worked with them for about
14 ten years.

15 Q. All right. And while -- through October 17, 2009, where
16 were you giving service for Empresas Martinez?

17 A. In Las Gaviotas development or subdivision.

18 Q. And what was your shift, sir?

19 A. The night shift. It was from 9:00 in the night till 5:00
20 in the morning.

21 Q. And what were your duties, sir?

22 A. I had to do preventive rounds throughout the community of
23 Las Gaviotas.

24 Q. And, sir, is Las Gaviotas a closed gated community?

25 A. Yes.

1 Q. And how big is Las Gaviotas? How many streets? How many
2 blocks?

3 A. It has four streets in the center, in the middle, one in
4 the rear part, and there is one in the front where the
5 security post is.

6 Q. Now, sir, when you say that you give security -- I'm
7 sorry, security rounds, rondas (ph), do you do security
8 rounds?

9 A. Yes.

10 Q. All right. And how often would you give those rounds?

11 A. Well, it would depend. Usually 30 to 35 minutes,
12 depending on whether I would have to, for example, hand out
13 documents to the residents or carry out some job for the
14 administration of Las Gaviotas.

15 Q. I'm sorry. Sir, do you know David Oquendo Rivas?

16 A. I know him, yes, as a resident of Las Gaviotas.

17 Q. Do you see him here today?

18 THE COURT: No need. No need to do that.

19 MR. AGUAYO: Okay.

20 BY MR. AGUAYO:

21 Q. How long have you known David Oquendo Rivas?

22 A. The time that I saw them there at Las Gaviotas
23 development.

24 Q. Approximately how much time?

25 A. About a year and a half approximately.

1 Q. Do you know where David Oquendo lived in Las Gaviotas?

2 A. Yes.

3 Q. Where?

4 A. At Angela's house.

5 Q. Would that be Angela Urquia?

6 A. Yes.

7 Q. Okay. Do you know who else lived with David in that
8 house?

9 A. The wife, David's wife, the baby and Jose.

10 Q. All right. Do you know, that would be Johanna, the wife?

11 A. Yes.

12 Q. And how about her other sister, Clayivinet?

13 A. No. I met her now. I had not met her before.

14 Q. Okay. Now, sir, on October 17, 2009, when, if ever, did
15 you see David Oquendo?

16 A. Between 9:00 and 9:15 in the evening when I started my
17 shift.

18 Q. Did you have a chance to talk with -- where did you see
19 him? I'm sorry. Where did you first see him?

20 A. He came into the subdivision in his personal vehicle, a
21 Ford Explorer. He greeted me in -- he greeted me, and he
22 asked me if everything was okay. And I greeted him, and I
23 said that my shift had started a few minutes before.

24 Q. Did he look nervous? Did he look upset? Did he look
25 calm? How did he look?

1 A. (Remarks in Spanish.)

2 MS. DOMINGUEZ: Objection, hearsay.

3 BY MR. AGUAYO:

4 Q. All right. Without telling us what he said, what you
5 saw, did he look normal? Did he look upset? Did he look
6 nervous? Just what you saw.

7 A. No. He looked tired. He looked exhausted, as if he had
8 worked.

9 Q. Now, how long did you talk to him when you saw him coming
10 in through the gate?

11 A. Just some minutes.

12 Q. Okay. And after he spoke with you, where did you see him
13 going, if you saw him at all going anywhere?

14 A. I saw that his vehicle went towards the street where he
15 lives.

16 Q. Okay. Now, at any time subsequent to that, did you do
17 ronda?

18 THE INTERPRETER: A round.

19 BY MR. AGUAYO:

20 Q. Thank you.

21 A. Yes.

22 Q. All right. And did you have the occasion to pass by
23 where David Oquendo lived?

24 A. Yes.

25 Q. All right. Did you see David Oquendo during that round?

1 A. No.

2 Q. Did you see his vehicle?

3 A. Yes.

4 Q. Did you notice where it was parked?

5 A. Yes. Near his residence.

6 Q. Were there other cars in front of the house?

7 A. Yes, there were more vehicles in front of the house.

8 Q. Okay. Now, late that night, close to midnight, 11:50, 12
9 o'clock midnight, what, if anything, happened? What, if
10 anything, did you hear or see?

11 A. I heard shots.

12 Q. A few shots or a lot of shots?

13 A. Pretty many. Quite many.

14 Q. How did you know they were shots?

15 A. In the beginning, the sound was similar to fireworks.

16 Q. And then how did you determine that it was gunshots?

17 A. It started, it was heard as if it was a spray of fire,
18 that was what was heard.

19 Q. Go on, sir.

20 A. And it lasted for a lapse of time, and in the end I came
21 to realize that there were shots from firearms, because the
22 last shots that were heard were like those of automatic
23 weapons.

24 Q. Okay. And what if anything occurred? What if anything
25 occurred after you heard those shots?

1 A. I communicated with the area State Police. And Agent
2 Melisiano was at that time the duty officer in the police
3 station. (Remarks in Spanish.)

4 THE COURT: Without telling us what she said to you
5 after the phone call --

6 THE INTERPRETER: Your Honor, do I interpret the
7 answer?

8 THE COURT: Up to there, yes.

9 THE WITNESS: And I communicated with her and she
10 told me --

11 BY MR. AGUAYO:

12 Q. Okay. Without going into what she told you, after you
13 spoke with her, what happened, what if anything did you do
14 concerning the gates? You said it was a closed community. It
15 had gates, correct? It was a closed community?

16 A. Uh-huh.

17 Q. Okay. There's one gate for entry and one gate for exit,
18 correct?

19 A. Yes.

20 Q. And what, if anything, did you do concerning those gates?

21 A. I stayed behind the post in the corner where I always
22 stood after I completed a round.

23 Q. Were the exit gates deactivated?

24 A. No.

25 Q. Okay. And what happened? What did you do?

1 A. I stayed there to pay attention to the entry gates.

2 Q. And approximately how long were you there? More or less.

3 A. I'd say approximately 45 minutes.

4 Q. All right. And what did you do after that?

5 A. After that, I commenced to do my rounds again.

6 Q. And during those rounds, did you see David Oquendo?

7 A. Yes. He stopped me. And his wife was there, too, with
8 the baby. And he was wearing a short -- shorts, like jean
9 type shorts, without a shirt.

10 MS. DOMINGUEZ: Objection as to what they said.

11 THE COURT: Yes. Sustained.

12 MR. AGUAYO: Okay.

13 THE COURT: No hearsay, please.

14 MR. AGUAYO: No problem, Your Honor.

15 BY MR. AGUAYO:

16 Q. Without telling us what David or Johanna or anybody else
17 told you, what if anything did you tell them?

18 A. That I didn't know with certainty what it is that had
19 happened out there. That there had been some shooting, but
20 that it was not known yet what had really happened.

21 Q. While -- okay. Let's go back just a second. While you
22 were waiting -- while you were waiting at the outside of the
23 guardhouse, as you said, you were standing in the corner, did
24 you see any cars enter or exit? After the shooting that you
25 heard.

1 A. Yes. A black vehicle approached, but it did not come in
2 at any time.

3 Q. What did it do?

4 A. (Remarks in Spanish.)

5 Q. Okay.

6 A. It went in reverse, the vehicle. And then it went up to
7 the light.

8 Q. Okay. So let's go back to Mr. Oquendo. So you see David
9 Oquendo with Johanna, yes?

10 A. Yes.

11 Q. Okay. And you stop and you speak with -- and you stop
12 and you speak with David, correct?

13 A. Yes.

14 Q. And how did David look? I mean, did he look nervous?
15 Did he look agitated? Did he look normal? How did he look?

16 A. He looked serene.

17 Q. Okay. And you mentioned something about his clothes.
18 What did he have on in this part of the body? In the lower
19 part of his body.

20 A. Yes, some jean shorts that go a little bit below the
21 knees.

22 Q. Okay. And did he have a shirt on or no shirt on?

23 A. He was without a shirt on.

24 Q. Okay. And how long did you speak with him, sir?

25 A. Just some minutes.

1 Q. And then where did you go?

2 A. I continued with the round.

3 Q. Okay. Now, sir, do you remember accompanying me to make
4 a video of Las Gaviotas and our private investigator Alvin
5 Aponte?

6 A. Yes.

7 Q. Okay. And what were we filming?

8 A. At first what we were filming in the video was the way I
9 did the rounds in the inside perimeter. The second take was
10 to do the whole inside perimeter. And the third round was to
11 cover the outside perimeter.

12 Q. Okay. Now, did you have the opportunity to view that
13 video before you came to testify here?

14 A. Yes.

15 Q. And was that video, what's depicted in that video the
16 same thing that you saw that we were filming?

17 A. Yes.

18 Q. All right.

19 MR. AGUAYO: Your Honor, at this time I'd like to
20 put on the video if I can?

21 THE COURT: Very well.

22 BY MR. AGUAYO:

23 Q. Sir, I want you --

24 COURTROOM DEPUTY: No, no. I will do it.

25 THE COURT: She'll do it.

1 COURTROOM DEPUTY: There you are.

2 BY MR. AGUAYO:

3 Q. All right. The date -- sir, the day that we made this
4 video, do you recall, was December 11, 2012?

5 A. Yes.

6 Q. All right. Sir, the events of La Tombola were on October
7 17th, 2009. We did the video on December 11 of 2012. Were
8 the structures that we're going to see in the video, were they
9 all there in October of 2009?

10 A. Except for this entry and exit, tele-entry, it was not
11 there at that time.

12 Q. Aside from that, of the structures, were they there?

13 A. Yes. And the rest of the homes, they look more or less
14 the same as when I was working there.

15 Q. All right.

16 MR. AGUAYO: Excuse me. Could you put this so I can
17 see it, also?

18 COURTROOM DEPUTY: Touch the screen.

19 MR. AGUAYO: Okay. Thank you.

20 BY MR. AGUAYO:

21 Q. The first one is how you did your rondas, correct?

22 THE INTERPRETER: Rounds.

23 THE WITNESS: I would start here in this middle or
24 center street in front of the guard post.

25 BY MR. AGUAYO:

1 Q. All right. Stop there. What is that vehicle there?

2 A. That is the vehicle that was used to do the rounds in the
3 subdivision.

4 Q. Continue, please. Stop there. And what is this that
5 we're seeing where the cars are coming in?

6 A. That is the security guard post.

7 Q. Continue, please. All right. Please explain to us as
8 the film is on, what is this?

9 A. This is the center street. And the guard post is in the
10 middle, and that's where I usually start my round in this
11 middle street. This one in the center is Reyal Street if I'm
12 not mistaken.

13 Q. And why are those garbage cans out in the street?

14 A. It must have been that the garbage truck came at dawn to
15 pick up the trash.

16 Q. Okay. Now where are we turning?

17 A. I don't recall the name of this street, but in the end of
18 it there are tennis courts.

19 Q. Okay.

20 A. Facing tennis courts.

21 Q. Stop it for a second, please. Now, there's a fence
22 there, correct, in front?

23 A. Yes.

24 Q. And behind there that is the tennis court fence?

25 A. Yes.

1 Q. Okay. And approximately how tall is the first fence that
2 you see?

3 A. Above six feet.

4 Q. And what about the cancha -- the tennis court fence?

5 A. It's much higher really.

6 Q. All right. Let's continue. And what's behind that
7 fence? Is that another Urbanization? Stop it.

8 A. Yes.

9 Q. Okay. And what is this that we're seeing here?

10 A. Okay. I would get down and I would go in this gate. And
11 I would check all around the tennis courts.

12 Q. Okay. Continue, please. All right. Where are we going
13 now?

14 A. We're going here to the left. We are going toward the
15 basketball court, and the administration offices.

16 Q. Okay.

17 A. Which is this that the camera's taking now. I would get
18 down here and go through this gate and check the whole
19 basketball court and the administrative offices. And I would
20 also check the locks of differential smaller houses that
21 contained tables and chairs for activities.

22 Here we turn a left. You get to this small part of
23 the street. It has no exit. And you turn here. And all of
24 that part of that perimeter is checked.

25 After that, you return to the Main Street where we

1 started the round. This is a security pick up, and this is
2 where we start the round, in that middle street. And then we
3 go on to the next street, and we take a right.

4 Q. And what street is this?

5 A. If I'm not mistaken, that's Paloma Street. The previous
6 street from where we came out, if I'm not mistaken, that's
7 Phoenix.

8 Q. Okay. Keep going. This is Paloma Street where David
9 lived with Johanna and the baby?

10 A. Yes.

11 Q. Keep going, please. Okay. Stop it. Do you see where
12 David used to live?

13 A. Yes.

14 Q. Could you stand up and point it out so the ladies and
15 gentlemen of the jury could see, please? There's a screen
16 behind you.

17 A. Yes. Here.

18 Q. Okay. And is that where you saw David that night?

19 A. Yes.

20 Q. All right. Continue. Continue.

21 All right. So this would be the house, that one
22 that's -- stop. Show me again where David and Johanna lived,
23 please?

24 A. (Witness indicating.)

25 Q. Okay. And where did you see David and Johanna that

1 night? If you could just turn around and point it out?

2 A. Here in front of the residence.

3 Q. Okay. Keep going. Okay. Now, David's vehicle, when you
4 went around, did you find it in the same place? Stop. Where
5 did you see David's vehicle parked?

6 A. In general, that SUV was parked here.

7 Q. Okay. And that night when you did your round, did you
8 see that vehicle parked there?

9 A. Yes.

10 Q. And when you spoke with David and Johanna, did you see
11 his vehicle still parked in the same place?

12 A. Yes.

13 Q. Okay. Let's continue, please. Where are we going now,
14 sir?

15 A. We take a left, and we're going to go to the last street.

16 Q. Excuse me. I lost my --

17 COURTROOM DEPUTY: Touch the screen.

18 MR. AGUAYO: Okay. Thank you.

19 BY MR. AGUAYO:

20 Q. Now where are we going, sir?

21 A. Well, one would stop here in this small part of the
22 street. There's hardly any space there to turn. One would
23 verify the perimeter there, and then one would continue on
24 with the round. From there, we would go on to where the round
25 was started.

1 Q. And that would be the casita on the right-hand side?

2 A. Yes. Can you stop it there? A little before. Stop
3 there. That's the tele-entry that I mentioned before. It has
4 some buttons, and you press the code and it allows you to exit
5 the subdivision. But at that time that tele-entry wasn't
6 there.

7 Q. Okay. Let's talk a little bit about this. If a visitor
8 wanted to come in, into the Urbanization, how would he gain
9 access to that -- to the urbanization?

10 A. That same tele-entry you see there, there's one on the
11 outside.

12 Q. Is that in October of 2009?

13 A. Yes.

14 Q. Okay. Go on, please.

15 A. Well, the visitor would use the tele-communicator, and
16 would communicate with the resident. And the resident would
17 then press a code in the phone at the home, and would allow
18 the visitor to enter that way.

19 Q. Okay. And what would happen if this would be a landline
20 phone?

21 A. Not necessarily. It could be a cellular phone, too.

22 Q. Okay. Now, that's if it's a visitor. What happens if
23 it's a resident? How do the residents have access to come in?

24 A. With the beeper.

25 Q. Okay. Now, let's talk about the salida, the exit, all

1 right? How would the resident -- well, how would a visitor be
2 able to exit?

3 A. If it's before 12 midnight, the vehicles get close to the
4 gate and there's a sensor there. And then the gate will open.

5 Q. And what would happen after midnight?

6 A. After 12 midnight, I would disconnect current, electrical
7 current to that gate.

8 Q. And how would a person be able to leave?

9 A. Before, if -- if I wasn't there at that corner where the
10 pick-up was, the person would have to -- if I was doing the
11 round in that pick-up, the person there at the exit gate would
12 have to wait until I arrived.

13 You'd first take down their information, which house
14 the person had been at, information would be taken down,
15 vehicle registration, the model, the color. Then the person
16 would be allowed to leave.

17 Q. What about if it were a resident? If it was a resident
18 before 12:00 AM, how would they be able to get out?

19 A. Information was taken down, too. It was the order of the
20 administration.

21 Q. All right. Let's go through that. If I'm a resident and
22 it's before 12:00 in the morning, before you take off the
23 electricity, do I go out just as any visitor would, that would
24 go by you with your vehicle and the gate would open?

25 A. Yes.

1 Q. And if I'm a resident and I want to leave after 12:00 AM,
2 after midnight, you stated that you cut the electricity. How
3 would a resident get out?

4 A. Well, if I wasn't at the corner, the person would have to
5 wait until I got back.

6 Q. And what about the data, what would you take concerning
7 the resident, if any?

8 A. Name, license plate number, model and the color.

9 Q. Okay. Now, the next part of the video you stated was
10 about what? The perimeter of the Urbanization, correct?

11 A. Yes. The first part.

12 Q. Can you play it?

13 MR. CHICO: This is the end of the first part.

14 MR. AGUAYO: Okay. Let's go to the second part then.

15 BY MR. AGUAYO:

16 Q. Now, sir, is it correct here what we're showing is the
17 perimeter of the Urbanization to show the ladies and gentlemen
18 of the jury how this Urbanization is enclosed?

19 A. Yes. We were traveling the whole perimeter.

20 Q. Behind those houses, what is there, other houses, a wall,
21 or it's open? What's behind there?

22 A. They have fences or walls.

23 Q. Are the walls made of cement?

24 A. Yes.

25 Q. And how high are they, sir?

1 A. Above six feet.

2 Q. All right. And what is behind these houses, sir?

3 A. Over here a wall, on this side. There's also an
4 apartment complex also known as Las Gaviotas. And it also has
5 a fence, a pretty high one in that area.

6 Can you stop it? These houses in front, they are of
7 another complex, not apartments, homes. Behind the -- behind
8 this house that I see in the front are other houses, and they
9 have a pretty high wall.

10 Q. All right. Continue, please.

11 A. That's a tennis court area.

12 Q. You've already told us it has a pretty high fence,
13 correct?

14 A. Yes.

15 Q. And these houses to the right, what's behind them?

16 A. A wall and homes. And they have nothing to do with Las
17 Gaviotas subdivision.

18 Q. And those walls at the perimeter, are they high also,
19 those houses?

20 A. I'm sorry? The question again?

21 Q. Are the walls behind those houses, are they high?

22 A. Pretty high. We go to the end of the street. These
23 houses on the right, there's a wall behind them, and it
24 divides the homes from a housing project back there.

25 Q. And are the walls behind those houses, are they also

1 high?

2 A. Yes, quite high. Behind those houses it's above six
3 feet.

4 Q. Okay.

5 A. Stop there a moment. That house that there is in front,
6 there's a wall behind them, and then behind that is the Main
7 Street to enter into the subdivision.

8 Q. Sir, could you stand up and look to your right-hand side?
9 Are there houses down that little road?

10 A. These homes that I'm facing, they have walls or fences.

11 Q. Okay. And that little road that you see going off to
12 your right?

13 A. This?

14 Q. Yes. Are there houses back there?

15 A. This part over here is part of the housing project. And
16 on this corner house, that's where the wall starts and it goes
17 down.

18 Q. The separation between that house and the residencial, is
19 there also a wall there?

20 A. There's also a fence there.

21 Q. Is it high?

22 A. Above six feet.

23 Q. All right. Let's continue. And behind these houses that
24 you see here on the right-hand, what's behind that?

25 A. Those houses have fences.

1 Q. Are those cement walls or chain link walls?

2 A. Cement.

3 Q. Okay. Now, we get back to the guardhouse, and we'll go
4 to the third one. The third and final video. Now, you stated
5 that the third one was the perimeter outside Las Gaviotas,
6 correct?

7 A. Yes.

8 Q. Okay. Again, please.

9 A. Stop there. That bar that you see on the right, in this
10 wall that we see in the front here, that's the entry, the
11 tele-entry for the entrance for the visitors when they come.
12 The visitor will communicate with the resident, and the
13 resident will authorize and open from the residence.

14 Q. All right. Can we continue, sir?

15 A. Yes.

16 Q. Okay. And what do you see on the top of these -- go back
17 a second, Chico, please. Chico. Well, go. Go. Continue.
18 Continue. I'm sorry. Okay. What do you see on top of these
19 walls?

20 A. The white part?

21 Q. They're like spikes, are they not?

22 A. Those are Christmas lights.

23 Q. On top of that.

24 A. Oh, yes, those are spikes.

25 Q. All right. Can we continue, please? Now, those spikes

1 are on some parts of the walls and in others there's not,
2 correct?

3 A. Yes.

4 Q. Okay. So now what are we seeing here to the left hand
5 side?

6 A. That's the wall, and then a part of it is Las Gaviotas,
7 and then part of it is the apartments that are adjacent to Las
8 Gaviotas. It ends here in front of this Ford pick-up. It has
9 a serpentine, and it comes together, the apartments and the
10 houses. It goes all over.

11 MR. AGUAYO: Your Honor, I have to apologize. I had
12 a little problem backing up here, so it might take a little
13 while.

14 BY MR. AGUAYO:

15 Q. Is that the serpentine wire?

16 A. This is the wall for the Las Gaviotas apartments. It's
17 quite high. It will have eight to ten feet in that area. Ten
18 feet high.

19 Stop. There. From that corner on, that ends where
20 the trash bins are. Employees are doing repairs. And that
21 has an entrance to the apartment complex. And the wall is
22 quite high in that area.

23 MR. AGUAYO: Chico, can you just give a little bit,
24 fast forward, because I just kept going back and forth with
25 the car.

1 BY MR. AGUAYO:

2 Q. Okay. So here we have the same scene, but I'm just
3 backing out, correct?

4 A. Yes. That which we see on the left is a wall. It's
5 painted in peach color. That wall belongs to Las Gaviotas,
6 and it's quite high.

7 Q. And the houses that you see there are the houses that
8 come up immediately after the wall?

9 A. Yes.

10 Q. So you would have a wall, and immediately thereafter you
11 would have the house, the structure?

12 A. Yes.

13 Q. Okay. Where are we now?

14 A. We're going towards the light.

15 Q. All right. So we've already passed the walls of Las
16 Gaviotas, correct?

17 A. Yes.

18 Q. And what we're going to do is go around Las Gaviotas to
19 see the perimeter, right?

20 A. Yes.

21 Q. What do we have here on the right?

22 A. This is the housing project.

23 Q. Okay. And that housing project is adjacent to Las
24 Gaviotas, correct?

25 A. It is adjacent to Las Gaviotas.

1 Q. So the wall from this housing project to Las Gaviotas, is
2 there a wall inbetween?

3 A. What you see, this group of apartments, well behind them
4 there is a wall. That wall goes through all the way until
5 that post that you see painted in green, painted after in
6 green.

7 Q. And behind these houses to the right, there's also
8 another wall that divides this housing project with Las
9 Gaviotas, yes?

10 A. Yes. These are the homes of Las Gaviotas over there, and
11 the fence is there.

12 Q. How many fences do we have here dividing Las Gaviotas
13 from the residential area? From the other residential area.

14 A. There are two fences, and they're above six feet high.

15 Q. Please continue.

16 A. We are going here towards the exit.

17 Q. This is where we exit?

18 A. Yes.

19 Q. And where do we go from there?

20 A. Towards the right. What you see here, we're going to
21 pass the white wall, and then it turns peach. That peach wall
22 belongs to the homes. It has nothing to do with Las Gaviotas
23 subdivision. It belongs to another group of homes that has
24 another name.

25 Q. But here we're trying to show what's all around Las

1 Gaviotas, correct?

2 A. Yes. That's the National Guard in Sabana Seca.

3 Q. And now?

4 A. You take a right. We are still by the grounds of the
5 National Guard. All those immediately -- and we are passing
6 it now. That's the Municipal Police station. And we begin to
7 see the Las Gaviotas apartments here.

8 Q. And those apartments are adjacent to the Urbanization,
9 correct?

10 A. Yes.

11 Q. With the tennis court we saw previously?

12 A. And also the basketball court and the administration
13 offices.

14 Q. And of course all this has walls, correct?

15 A. Stop there. (Remarks in Spanish.)

16 Q. Yes.

17 A. This is -- this where this wall ends, that's the Las
18 Gaviotas apartments perimeter, the one that we traveled when
19 we got to that end where we could barely turn.

20 Q. Okay. Continue, please.

21 A. We continue on. Now we are going to approach the
22 intersection where the medical emergency offices of Toa Baja
23 are. You see the ambulances here.

24 And we turn to the right. We take another right
25 here at the corner. And then we go toward the front and the

1 end. And we get to the Las Gaviotas subdivision again. We
2 are approaching once again the front of the Las Gaviotas
3 subdivision.

4 Q. All right. That's it. Sir, I just have two more
5 questions for you. You stated that you're not related to
6 David Oquendo, correct?

7 A. No.

8 Q. Do you have any reason to lie on his behalf?

9 A. No.

10 MR. AGUAYO: No further questions, Your Honor.

11 THE COURT: Cross.

12 MS. DOMINGUEZ: Briefly, Your Honor.

13 THE COURT: Please.

14 CROSS-EXAMINATION

15 BY MS. DOMINGUEZ:

16 Q. Good afternoon, sir.

17 A. Good afternoon.

18 Q. I'd like to ask you just a few questions about the
19 security system you had at the development.

20 A. Yes.

21 Q. As I understand your testimony, after 12:00 AM, in order
22 to exit, anyone, visitor or resident, needs to be let out by
23 the security guard on duty?

24 A. Yes.

25 Q. Is that correct?

1 A. Yes.

2 Q. But the same is not true to come into the development?
3 Is that correct?

4 A. Yes.

5 Q. It is correct?

6 A. Yes.

7 Q. So a resident with either a beeper or with the code, the
8 access code, could come in at any hour without having to check
9 in with the security guard on duty?

10 A. Yes.

11 Q. In fact, there may not even be a security guard on duty
12 there because the security guard could be doing the rounds?

13 A. Yes.

14 Q. Now, let me ask you, sir, have you had, during the time
15 that you're a security guard at this development, which I
16 think you said was about a year and a half, did you have any
17 burglaries in that development?

18 A. Situations with residents, persons that would hear noises
19 in the back part, the patios of their houses. You would go
20 and investigate in order to verify that everything was fine.
21 But major things during my shift, generally speaking no. Many
22 things like that didn't happen.

23 Q. Now, could you explain to us, sir, under what
24 circumstances you would have to register someone who was
25 coming into the development?

1 A. If the resident was not at home, for example, I would
2 approach the person. The person would say to me, I am calling
3 through the tele-entry. No one is answering for me. I would
4 approach the person and I would say, I am going to the
5 resident's house. But if that person doesn't answer, doesn't
6 respond, I cannot let you in, because if they don't answer me
7 when I call the house, it means that there is no one there.
8 And I cannot allow that person entry pursuant to instructions
9 from the administration.

10 Q. Sir, I appreciate that, but that's not exactly my
11 question. My question is, under what circumstances would you
12 have to register a resident or a visitor entering the
13 development?

14 Now I'm talking about, I'm referring to somebody
15 that you allow access to, not that you keep out.

16 A. Okay. The resident is called. I call from a listing
17 that there is. For example, is Pedro Rosa here. Correction
18 on the translation, I have Pedro Rosa here at the entrance.
19 Are you authorizing me to allow him entry? The information is
20 taken down for this. The model did have the car, the license
21 plate number, and since the resident approved it, they are
22 allowed to go through.

23 Q. And in 2009, would you know whether that tele-entry
24 system had already been installed?

25 A. The one for entering, yes, was functioning, was working.

1 Q. And, sir, you told us you were on duty on October the
2 17th, 2009 beginning I believe your testimony was nine
3 o'clock. Is that accurate?

4 A. Yes.

5 Q. And let me show you. May I approach? Let me show you
6 the entry log that's marked for identification Exhibit 209 A.

7 MR. AGUAYO: Excuse me, Maria. Which one? What
8 date?

9 MS. DOMINGUEZ: October 17.

10 MR. AGUAYO: October 17. All right. Thank you.

11 BY MS. DOMINGUEZ:

12 Q. Do you recognize that as a sign-in sheet for Las
13 Gaviotas?

14 A. This sheet is the exit record.

15 Q. Okay.

16 A. The exit log.

17 Q. And where would be the entrance record?

18 A. No, that is -- how do you say it. This is the sheet for
19 the exit log.

20 THE COURT: Microphone. Microphone.

21 THE WITNESS: No, this is the exit log, not the
22 entrance log. It will state it on the sheet, entry or exit
23 log.

24 BY. MS. DOMINGUEZ:

25 Q. Okay. And there should be a sheet that says entry log?

1 A. There is supposed to be, because there were several
2 sheets.

3 Q. Do you know of any reason why those entry logs would be
4 missing?

5 MR. AGUAYO: Objection, Your Honor. He didn't give
6 those to her. She subpoenaed them from the compound.

7 THE COURT: What is the question again?

8 BY MS. DOMINGUEZ:

9 Q. Does he know of any reason why the entry logs would be
10 missing?

11 THE COURT: Does he know of any reason. That's all.
12 It's a valid question.

13 THE WITNESS: I wouldn't know. I don't know if there
14 weren't any during that time, what happened, whether the
15 administration hadn't provided any.

16 BY MS. DOMINGUEZ:

17 Q. Well, let me ask you, sir, do you remember on October the
18 17th, 2009, a date on which you've testified about during your
19 testimony today, do you remember whether you prepared an entry
20 log?

21 A. No.

22 Q. Okay. Now, I'd like to direct your attention to October
23 the 17th, 2009. That evening, when you were on shift --

24 A. Would you allow me to interrupt you?

25 Q. Yes.

1 A. There was a conflict with the president, with the
2 administration. This person for personal reasons of hers --
3 you keep on doing what you have to do, and whoever is
4 attempting to enter, let them enter however they can. Those
5 were her instructions.

6 Q. Okay. Now do you have anything, do you want to
7 supplement my answer to your prior question, as to whether you
8 know whether you prepared an entry log on October the 17th,
9 2009? Or is your answer the same?

10 A. No, no.

11 Q. That you don't know?

12 A. No, I did not prepare a sheet. As a matter of fact,
13 sometimes they would prepare it and sometimes they wouldn't.
14 The administration.

15 Q. So you would agree with me, sir, that then we cannot rely
16 on the entry logs in order to make a determination as to who
17 entered that evening, Las Gaviotas?

18 A. During the entry hours.

19 Q. And the entry hours were 24 hours a day, weren't they?

20 A. Si.

21 Q. There was no restrictions to enter, was there?

22 A. Yes, yes.

23 Q. All right. Now, taking your attention back to October
24 the 17th, 2009, sir, you testified that you recall seeing
25 David Oquendo that day, that evening, between approximately

1 9:00 or 9:15 in the evening. Would that be accurate?

2 A. Yes.

3 Q. And of course because you do not have an entry log from
4 which to verify the information, you would be exclusively
5 based on your memory back to October 17, 2009; is that
6 correct?

7 A. Yes.

8 Q. Now, sir, there came a time late that evening when you
9 heard some shots being fired that you originally testified you
10 thought were fire crackers; is that correct?

11 A. Yes.

12 Q. And to the best of your recollection, approximately what
13 time was that?

14 A. At about 11:45, more or less.

15 Q. Now, you indicated also during your testimony, sir, that
16 sometime after you heard these shots being fired, that you saw
17 a Ford F-150 pick-up truck attempting to enter the
18 development; is that correct? Observed.

19 A. Yes.

20 Q. Okay. And you described this vehicle as dark colored?

21 A. Yes.

22 Q. But it was dark outside. Were you able to tell the exact
23 color or can you just simply tell us that it was dark?

24 A. Yes, black. A black vehicle.

25 Q. And when you say that, did you not allow the vehicle to

1 enter, can you be more specific? Did the vehicle actually ask
2 to be admitted into the development or did you personally make
3 the decision that you would not entertain a request for
4 admission?

5 A. No, not only did I not allow it to enter, but rather that
6 the persons that were inside of the vehicle at no time put
7 down the window in order to identify themselves so as to say
8 listen, I am John Doe, I'd like for you -- I'd like for you to
9 allow me to enter into the complex. They didn't at any time
10 put down the windows so as to have me allow them entry into
11 the complex.

12 Q. So the vehicle just stood at the entryway waiting to see
13 if you would open the gate?

14 A. That is correct.

15 Q. And of course you did not?

16 A. I did not open the gate. Since the person did not
17 identify him or herself, generally speaking, if you approach a
18 complex where there is a security service, you lower the
19 window and you identify yourself. At no time was there any
20 contact of that sort.

21 Q. And of course you were in a state of heightened alert
22 because you had, a few minutes earlier, you had heard these
23 gunshots being fired nearby?

24 A. That is correct.

25 Q. And how much time would you say expired between the time

1 | you heard the shots to the time the pick-up drove up to the
2 | entry to Las Gaviotas?

3 | A. About some minutes. About two to three minutes
4 | approximately.

5 | Q. Okay. And would it be accurate to say that you described
6 | that amount of time as five minutes in your written statement
7 | to the defense?

8 | A. Yes.

9 | Q. And by the time that pick-up truck attempts to gain entry
10 | into the development, the shooting had stopped; is that
11 | correct?

12 | A. Yes. After this happened, the vehicle approached. I
13 | called. I contacted Agent Feliciano, who was being -- who was
14 | the duty officer. The agent asked me whether I had been able
15 | to write down the license plate number for the vehicle, and I
16 | told him no. Due to the position that the vehicle was in and
17 | because it was dark in that area, because that is a dark area.
18 | And it immediately left. So that step was not able to be
19 | taken.

20 | Q. All right. And then sometime thereafter is when you
21 | begin your round, your security around the development? Is
22 | that correct?

23 | A. Yes. Between 12:30 and 1:00 AM approximately.

24 | Q. All right. And it's during that lapse of time between
25 | 12:30 and 1:00 that you again see David Oquendo?

1 A. That is correct.

2 Q. And as you've described it, he was standing in the front
3 of the house where he lived with Johanna?

4 A. And the baby.

5 Q. And who else was outside? I'm sorry. Did you see
6 Johanna's sister?

7 A. No. No. Because I met Joannas' sister right here in the
8 courtroom, because I had not known, did not know that she had
9 a sister.

10 Q. So if she lived with Johanna and her mother in 2009, she
11 entered and exited that development a number of times and you
12 never knew that she lived there? Is that correct?

13 A. Yes, I didn't get to meet her during that time.

14 Q. Did you see Johanna's mother outside?

15 A. No. No.

16 Q. So you only saw Johanna and David?

17 A. And the baby.

18 Q. Okay. So the baby was still outside between 12:30 and
19 one o'clock?

20 A. Yes. In front of the house. Yes, they were in front of
21 the house talking. They were with the baby. I recall that
22 they were walking with her, holding her by her hands, because
23 she was still quite a baby during that time.

24 Q. Now, if you can estimate, understanding your testimony
25 that that security round took place between 12:30 and 1:00,

1 are you able to estimate for us whether it was closer to 12:30
2 or closer to 1:00 that you saw David Oquendo?

3 A. About that. I couldn't give you the exact time.

4 Q. Okay. But whether it be 12:30 or whether it be one
5 o'clock in the morning, it's your testimony that the baby was
6 still outside? Is that correct?

7 A. Yes, she was with them.

8 THE COURT: The baby was walking with them.

9 THE WITNESS: They were walking with her, holding her
10 hands.

11 BY MS. DOMINGUEZ:

12 Q. Now, sir, let me show you -- Court's indulgence just one
13 moment. I want to mark for identification Exhibit 208.

14 MR. AGUAYO: Which one?

15 MS. DOMINGUEZ: October 16. Let me ask you to take a
16 moment, sir, to review this sheet. May I remain here a
17 moment, Judge?

18 THE COURT: Yes.

19 BY MS. DOMINGUEZ:

20 Q. Could you tell us, first of all, was this document
21 written by you?

22 A. No. This is from Officer Luis Moyet. That is what is
23 written here.

24 Q. And who was he?

25 A. He was the supervisor of the post.

1 Q. Okay.

2 A. The post supervisor.

3 Q. And, sir, can you see that there is an entry for -- there
4 is I should say a registered exit for David Oquendo in that
5 registry sheet that I just showed you?

6 A. I didn't take notice of David Oquendo's exit. Yes.

7 Q. Now, could you tell us, you've already testified on
8 direct examination, but could you remind us what car David
9 Oquendo drove usually?

10 A. Yes. A Ford Explorer SUV, a light gold in color. This
11 vehicle, as made by the manufacturer, the paint is one that
12 has colors that change, tornasol (ph). In the evening, that
13 color seems to look as if it were green.

14 THE COURT: It's called pearlite.

15 THE WITNESS: Pearlite.

16 THE COURT: Pearlite in color.

17 THE WITNESS: Pearlite in color. Thank you, Your
18 Honor.

19 BY MS. DOMINGUEZ:

20 Q. And, sir, did you ever see David Oquendo driving an F-150
21 Ford?

22 A. A Ford, yes.

23 Q. An F-150?

24 A. No, no. A Ford Explorer.

25 Q. You never saw him driving a Ford F-150?

1 A. No.

2 Q. And, sir, if I place this document 203 A in front of you,
3 would that refresh your recollection whether David Oquendo
4 also drove other vehicles into the Las Gaviotas development?

5 MR. AGUAYO: Your Honor, she said at the entry. This
6 is salida.

7 THE COURT: It doesn't really matter. Could be
8 entry, exit. Whether he was driving other vehicles in or
9 out.

10 MR. AGUAYO: I just want to be clear.

11 THE COURT: Objection overruled.

12 THE WITNESS: I never got to see him driving this
13 type of vehicle.

14 BY MS. DOMINGUEZ:

15 Q. Now, let me ask you, sir, going back to the time when you
16 observe David Oquendo in the front of Johanna's house with
17 Johanna and the baby.

18 A. Yes.

19 Q. Were there neighbors outside or around the house?

20 A. In the beginning of the street, when I started the round
21 on that street, on the house to the left, on the houses to the
22 left there were residents that were talking. And midway down
23 the street on the left side.

24 Q. What is the name of the street you're referring to?

25 A. If I'm not mistaken, that street is Paloma Street.

1 Q. The houses you are referring to, sir, how far are they
2 from David and Joanna's house, the one where you saw them?

3 THE COURT: The number of houses.

4 BY MS. DOMINGUEZ:

5 Q. The number of houses.

6 A. That -- from where those resident houses were, the house
7 would be in the front to the right, about some ten houses away
8 or a bit more.

9 Q. Now, during this preventive round that you were --
10 security sweep that you were conducting, on Paloma Street did
11 you notice a house where they were having a party?

12 A. No, no. I didn't notice that at that time.

13 Q. And to be very clear, sir --

14 THE COURT: Right in front of David's house?

15 THE WITNESS: No.

16 BY MS. DOMINGUEZ:

17 Q. And to be very clear, sir, you did not see any neighbors
18 across the street, directly across the street from Johanna's
19 house?

20 A. No.

21 Q. Or the house immediately to the right of the house
22 directly in front of the house?

23 A. No.

24 Q. Or the one on the left of the house directly in front?

25 A. No.

1 Q. And what you are able to tell us, sir, about the
2 whereabouts of David Oquendo on the evening of October the
3 17th, 2009, is that you saw him at approximately 9:00 or 9:15
4 that evening. Correct?

5 A. When he entered.

6 Q. And then you saw him again between 12:30 in the morning
7 and 1:00 in the morning when you were conducting your security
8 sweep?

9 A. Yes.

10 MS. DOMINGUEZ: May I approach, Your Honor?

11 BY MS. DOMINGUEZ:

12 Q. Let me show you what is marked as exhibit for
13 identification 209. Let me place this document in front of
14 you, sir, and please take a moment to examine it.

15 Let me know when you're done, sir.

16 A. Yes.

17 Q. Do you recognize what is depicted in that identification
18 209?

19 A. It looks like the fence of Las Gaviotas.

20 Q. All right. And if you look at it, are you able to tell
21 us where that fence is located in relation to the entrance?

22 A. It looks like the street that comes down from the light,
23 the traffic light.

24 Q. And how close is that to the entrance?

25 A. I'd have to see this photograph from a different angle in

1 order for me to be able to give you a better description of
2 that area.

3 Q. But you do recognize that as a portion of the gate that
4 surrounds the Las Gaviotas development?

5 A. Yes.

6 MS. DOMINGUEZ: We move 209 into evidence.

7 MR. AGUAYO: Your Honor, I would object for the
8 simple reason --

9 THE COURT: Can I see it?

10 MS. DOMINGUEZ: Yes, sir.

11 MR. AGUAYO: Can we approach, Your Honor?

12 THE COURT: Sure.

13 (Bench conference held.)

14 MR. AGUAYO: Although it looks like it, I don't know
15 if it is. That's the problem I have.

16 THE COURT: What is the point you're trying to make?

17 MS. DOMINGUEZ: The height, and that there's no
18 spokes.

19 THE COURT: Admitted.

20 (At 5:51 PM, Government's Exhibit 209 admitted into
21 evidence.)

22 (Bench conference concluded.)

23 THE COURT: Received in evidence.

24 Let's take a five minute recess, and we'll be back.

25 We have to finish this witness. Five minutes.

1 (At 5:51 PM, recess taken.)

2 (At 6:12 PM, proceedings reconvened.)

3 MS. DOMINGUEZ: Thank you, Your Honor.

4 BY MS. DOMINGUEZ:

5 Q. Mr. Malave, all right, I'd like to direct your attention
6 to the monitor in front of you.

7 A. Yes.

8 Q. Do you recognize that as the photo that I showed you
9 shortly before the recess?

10 A. Yes.

11 Q. And while you're not able to tell us at the moment where
12 that portion of the gate is located in relation to the
13 front -- the entrance of the development, you do recognize
14 this as a portion of the gate that surrounds Las Gaviotas?

15 A. It is quite similar.

16 Q. Okay. And would you agree with me, sir, that it appears
17 to be shorter than the wall that is immediately adjacent to
18 it?

19 A. Yes.

20 Q. And as it is depicted in the photograph, it does not have
21 any spokes in the upper portion of the wall?

22 A. Yes.

23 Q. Now, sir, let me ask you also, referring again to the
24 entrance of the development, whether in addition to the entry
25 and exit gate for vehicles, there was also a pedestrian gate?

1 A. Yes.

2 Q. And how did that gate operate? Was it open or closed?

3 A. That gate was always closed. Any resident that would
4 want to use the pedestrian gate had to have his key.

5 Q. Of course then any resident that entered or exited that
6 gate with his or her own key would not have to rely on you to
7 allow them entry or exit; is that correct?

8 A. Yes.

9 Q. And in 2009, were there any security cameras covering the
10 area of the entrance, exit and pedestrian gate?

11 A. No. No.

12 Q. Now, sir, I'm sorry, I'm going to ask you this question
13 out of turn. I neglected to ask you when you observed David
14 Oquendo late that evening between 12:30 and 1:00 AM and the
15 early morning hours of October the 18th, you described him as
16 not wearing any shirt; is that correct?

17 A. Yes.

18 Q. And he was wearing some shorts below the knee; is that
19 accurate?

20 A. Yes. Yes.

21 Q. Do you remember what color they were?

22 A. Yes. They were blue jean color.

23 Q. Okay. And lastly, sir, do you recall whether he was
24 wearing any shoes?

25 A. I didn't notice that.

1 Q. So you wouldn't know one way or the other?

2 A. I wouldn't know whether he was wearing sandals or some
3 sort of moccasins, but I did notice that he was wearing the
4 blue shorts to right below the knee.

5 Q. Now, sir, just to recap here, you've explained to us that
6 unless it's after midnight, a resident or visitor did not need
7 to request that you allow them to exit, because there was a
8 sensor on the gate; is that correct?

9 A. In order to exit after midnight?

10 Q. No, before midnight.

11 A. Before? Yes, they could leave freely without any
12 problem.

13 Q. So you wouldn't necessarily know everyone that exited the
14 development before midnight on a particular day?

15 A. Yes.

16 Q. In fact, you might not even be there if the exit occurs
17 during a period of time when you're conducting your security
18 sweep; is that correct?

19 A. Yes.

20 Q. Thank you, sir.

21 MS. DOMINGUEZ: I have no further questions, Judge.

22 THE COURT: Mr. Aguayo.

23 MR. AGUAYO: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. AGUAYO:

1 Q. Sir, all right, concerning the entry log to Las Gaviotas,
2 if some resident, if a resident has a beeper, do you have to
3 enter him in the entry log?

4 A. No.

5 Q. Okay. And, sir, the Ford F-150 truck that you saw after
6 the shots were fired, what color was it?

7 A. Black.

8 Q. Are you sure about that, black?

9 A. Yes.

10 Q. Okay. Now, sir, when you were asked if when you went by
11 David Oquendo and Johanna's residence, did you see people in
12 front, did you see people to the side, and did you see people
13 having a party to the left, do you recall that?

14 A. Yes.

15 Q. And you stated that you did not see that?

16 A. In the beginning, halfway down the street, on the left
17 side, yes. But in front of their residence, the ones that I
18 saw was them.

19 Q. So the only thing that you can say, what you saw as to
20 other people, either in front, to the side, or nextdoor, is
21 what you saw at the moment that you arrived, correct?

22 A. Yes.

23 Q. So if there was a person in the front, if there was a
24 person on the side, or if there were people outside from la
25 fiesta, from the party, and they went back inside when you

1 passed, you wouldn't see them, correct?

2 MS. DOMINGUEZ: Objection, Your Honor. Calls for
3 speculation, assumes facts not in evidence, and leading.

4 THE COURT: Well, I think that the answer is obvious.
5 If it wasn't there, he could not see a bit, nothing.

6 MR. AGUAYO: Thank you, Your Honor.

7 Could I have 209, please?

8 BY MR. AGUAYO:

9 Q. Now, sir, when we were showing the video of Las Gaviotas,
10 remember there were portions that had spikes on the walls?

11 A. Yes.

12 Q. And did we also see and it did we also mention that some
13 parts of the wall don't have puas (ph)?

14 A. Yes.

15 Q. As in this picture, correct?

16 A. Yes.

17 Q. I want to ask you, sir, behind that wall, immediately
18 behind the wall, over here, do you see that, sir?

19 A. Yes.

20 Q. There are houses, correct?

21 A. Yes.

22 Q. All right. And that wall is adjacent or in front of all
23 the houses as we saw in the video along the perimeter,
24 correct?

25 A. Yes.

1 Q. Okay. Now, my last question, sir. Ms. Dominguez, the
2 prosecutor, asked you about the pedestrian gate. Do you
3 remember that?

4 A. Yes.

5 Q. All right. And you had stated in your testimony that
6 after the shots were fired, that you stayed there until
7 approximately 12:30, 12:45. Correct?

8 A. Yes.

9 Q. Do you remember, the time that you were there from 12:30
10 to approximately 12:45, did you see David Oquendo come in
11 through that gate?

12 A. No.

13 MR. AGUAYO: No further questions, Your Honor.

14 MS. DOMINGUEZ: Judge, I have no further questions.
15 May I inquire from counsel if he has an objection to the
16 admission of this document written by Mr. Malave?

17 MR. AGUAYO: Well, let me see.

18 MS. DOMINGUEZ: Although it's out of turn, Judge.

19 MR. AGUAYO: I don't know what it is. If I may be
20 given a moment, Your Honor?

21 Your Honor, at this time we would like to put in --

22 THE COURT: The video.

23 MR. AGUAYO: -- the video, yes, Your Honor.

24 THE COURT: Very well. Received.

25 MS. DOMINGUEZ: I have no objection.

1 (At 6:26 PM, Defendant Oquendo Exhibit admitted into
2 evidence.)

3 MS. DOMINGUEZ: We'd like to move in this Exhibit,
4 too, then.

5 THE COURT: No objection?

6 MR. AGUAYO: Yes, Your Honor. It hasn't been
7 authenticated.

8 MS. DOMINGUEZ: I asked him questions about this, but
9 I'll be happy to do it briefly with two or three questions,
10 Judge.

11 THE COURT: Sure.

12 MS. DOMINGUEZ: It's a log that he prepared. I asked
13 him some questions about it.

14 THE COURT: Let me take a look at it.

15 MS. DOMINGUEZ: May I briefly just inquire?

16 THE COURT: Yes.

17 RECROSS-EXAMINATION

18 BY MS. DOMINGUEZ:

19 Q. Sir, let me just ask you a last couple of questions.

20 I'll try to be brief here. Let me ask you about Government
21 Exhibit 210 for identification, sir. Do you recognize that?

22 A. Yes.

23 Q. What is that document?

24 A. An exit record register.

25 Q. And who prepared that exit record?

1 A. I did.

2 Q. And for what date was that prepared?

3 A. It states here October 18th.

4 Q. So that would be for October the 18th from 12:00 AM on,
5 until 5:00 AM?

6 A. Yes.

7 Q. And you recognize your handwriting?

8 A. Yes.

9 Q. And is that the form that was used to prepare those exit
10 registries?

11 A. Yes.

12 Q. And is it prepared in the same manner as you prepared the
13 other registries in the regular course of business?

14 A. Yes.

15 Q. And that was prepared at the request of the Association,
16 to whom you provided protection at the development; is that
17 correct?

18 A. Yes.

19 Q. And the information that was entered as the person was
20 attempting to exit --

21 THE COURT: I don't need to hear anything further.

22 Received.

23 MR. AGUAYO: No objection, Your Honor.

24 THE COURT: Very well.

25 (At 6:29 PM, Government Exhibit admitted into

1 evidence.)

2 THE COURT: Mr. Aguayo, do you have any additional
3 evidence?

4 MR. AGUAYO: Yes, Your Honor, we have.

5 THE COURT: Just to know. I have to make some plans
6 here.

7 MR. AGUAYO: It would be for stipulations, Your
8 Honor, that we have to write out.

9 THE COURT: Aside from the stipulations, you don't
10 have anything else? Why don't you approach the side bar a
11 minute.

12 MR. AGUAYO: Yes.

13 (Bench conference held.)

14 THE COURT: What is the stipulation about?

15 MS. DOMINGUEZ: Mr. Aguayo approached us with a
16 stipulation with respect to the newspaper articles, and we
17 agreed. He's going to write it up. And we have no problem
18 with that.

19 THE COURT: Okay.

20 MR. AGUAYO: Also a stipulation that they found
21 Christian's DNA, and they didn't find David's.

22 MS. DOMINGUEZ: As a major contributor.

23 MR. HEGYI: And I've already drafted it up, and it's
24 been signed by everybody.

25 THE COURT: And that would be it, your case?

1 MR. AGUAYO: Yes, sir.

2 THE COURT: Mr. Ruhnke, you don't have anything
3 further?

4 MR. RUHNKE: No, sir.

5 THE COURT: And rebuttal?

6 MS. DOMINGUEZ: We have a very brief rebuttal case.

7 THE COURT: Okay. So that's the morning.

8 MS. DOMINGUEZ: Yes, sir.

9 THE COURT: Okay. Thank you very much.

10 (Bench conference concluded.)

11 THE COURT: You are now excused, sir. You can leave.
12 Thank you.

13 (At 6:30 PM, witness excused.)

14 THE COURT: Members of the jury, the only evidence
15 that remains according to what I discussed with counsel is a
16 couple of stipulations that they are going to write tonight.
17 There is an agreement, but they have to put them in black and
18 white. And the Government says that they're going to call
19 very brief rebuttal evidence.

20 Rebuttal evidence is evidence the Government may
21 present as a result of the evidence presented by defendants.
22 Other than that, we're going to be finished with the
23 presentation of evidence in this part of the case.

24 So with that in mind, I will ask you to be here
25 tomorrow at the usually hour to receive this evidence. And I

1 am sure that after that we're going to have a shorter day. I
2 may dismiss you earlier so I can work on the jury instructions
3 and other things, okay? See you tomorrow morning.

4 COURT SECURITY OFFICER: All rise.

5 (At 6:31 PM, jury left the courtroom.)

6 THE COURT: Let me ask counsel a couple of things
7 here. If we finish tomorrow, let's say before eleven o'clock
8 in the morning --

9 MS. DOMINGUEZ: Yes, sir.

10 THE COURT: --are we ready for closings Thursday
11 morning?

12 MR. AGUAYO: No.

13 THE COURT: You're not?

14 MR. AGUAYO: No, sir.

15 THE COURT: So you want to do closings and
16 instructions on Friday?

17 MR. AGUAYO: Yes, sir.

18 MR. RUHNKE: (Nodding head up and down.)

19 MR. REBOLLO: I'm ready when you say, Judge.

20 MS. DOMINGUEZ: We are ready when you say as well.

21 THE COURT: You are not ready, really?

22 MR. AGUAYO: I am not ready, Your Honor, really.

23 THE COURT: What about Thursday afternoon?

24 MR. AGUAYO: Your Honor, if you'll give me to Friday,
25 I'd really appreciate it.

1 THE COURT: You are, Ms. Dominguez?

2 MS. DOMINGUEZ: Yes, sir.

3 THE COURT: Mr. Ruhnke, you rested?

4 MR. RUHNKE: Mr. Rebollo?

5 THE COURT: Mr. Rebollo, you are ready?

6 MR. REBOLLO: Judge, I don't want to cause -- we can
7 do it Friday.

8 THE COURT: Assume we should be ready for closings
9 after lunch on Thursday.

10 MR. AGUAYO: Yes, sir.

11 THE COURT: That's the most I can do.

12 MR. REBOLLO: Judge, we won't have time to finish by
13 the afternoon.

14 THE COURT: You'll be surprised. How long do you
15 think your closings will be.

16 MR. REBOLLO: At least a couple hours, three.

17 THE COURT: I don't think I have ever had a closing
18 go for three hours.

19 MR. REBOLLO: I've given them here, Your Honor.

20 THE COURT: Not with me.

21 MR. AGUAYO: Your Honor, I haven't started it, but
22 I'm thinking about an hour, hour and 15 minutes.

23 THE COURT: That sounds reasonable.

24 MR. AGUAYO: I'm sorry.

25 THE COURT: That sounds reasonable to me. Three

1 hours, no way.

2 MR. RUHNKE: How about the Government?

3 THE COURT: Government, how much do you have?

4 MR. HEGYI: An hour, hour and a half, Your Honor.

5 THE COURT: Sound reasonable.

6 MR. REBOLLO: I can do two, Your Honor.

7 THE COURT: I'll give you two. We're going to do it,
8 and if we have to work later, we will so we can have -- the
9 idea is I don't want to rush deliberation on a guilt phase on
10 a Friday late in the afternoon. That's not good for anybody.
11 That's why I want to start Thursday at lunch time to pace
12 ourselves and do it right.

13 MR. REBOLLO: We're going to request that they
14 deliberate on Monday.

15 THE COURT: No. We will start deliberations as soon
16 as they get the case. I'm sorry. That's the way it's going
17 to be.

18 MR. REBOLLO: I understand that, but we were under
19 the impression because it will be on Friday, the deliberations
20 would be Monday.

21 THE COURT: No.

22 MR. REBOLLO: We don't want them to start Friday
23 either.

24 THE COURT: No. We are going to do it this way. We
25 will start the closings at one o'clock on Thursday with the

1 idea they will deliberate until a reasonable hour on Friday.
2 If they are not finished, I will dismiss them and they will
3 continue Monday. Okay. Thank you.

4 MR. RUHNKE: Yes, sir.

5 COURT SECURITY OFFICER: All rise.

6 (At 6:34 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

3

4 I certify that this transcript consisting of 219 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable Judge José
7 Antonio Fusté on March 5, 2013.

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12 S/ Amy Walker

13 Amy Walker, CSR 3799

14 Official Court Reporter

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